

# EXHIBIT 5

---

**Ground Lease Agreement**

**between**

**MB MARINA PARK, LLC,**

**a Delaware limited liability company**

**and**

**THE CITY OF MIAMI BEACH, FLORIDA,**

**a Florida municipal corporation**

---

**City Commission Resolution No. 2020-\_\_\_\_\_**

## TABLE OF CONTENTS

Article I VOTER REFERENDUM, EFFECTIVE DATE AND DEFINITIONS .....	1
Section 1.1 Voter Referendum.....	1
Section 1.2 Effective Date .....	2
Section 1.3 Defined Terms .....	2
Section 1.4 Exhibits and Schedules. ....	21
Section 1.5 Interpretation.....	21
Article II LEASED PROPERTY, PARKING, OTHER RIGHTS AND TERM.....	21
Section 2.1 Description of Leased Property .....	21
Section 2.2 Parking .....	22
Section 2.3 Utility and Public Access.....	23
Section 2.4 Submerged Land Lease.....	23
Section 2.5 Lessee’s Right to Use Logo and Name.....	25
Section 2.6 Term.....	26
Article III CONSIDERATION .....	26
Section 3.1 Rental .....	26
Section 3.2 Method of Payment.....	27
Article IV GROSS RECEIPTS.....	28
Section 4.1 Gross Receipts Defined.....	28
Section 4.2 Items Excluded.....	29
Section 4.3 Tax Returns .....	29
Article V RECORDS, AUDIT, ANNUAL DEPOSIT, NO PARTNERSHIP.....	29
Section 5.1 Records .....	29
Section 5.2 Annual Report.....	30
Section 5.3 Audit .....	30
Section 5.4 No Partnership Relationship .....	31
Article VI TAXES, ASSESSMENTS, AND UTILITIES .....	31
Section 6.1 Lessee to Pay.....	31
Section 6.2 Procedure if Taxes Assessed.....	32
Section 6.3 Special Assessments .....	33
Section 6.4 No Tax Abatements or Other Public Subsidies to Lessee .....	33

Article VII MARINA LICENSES AND PERMITS AND CHALLENGE TO LEASE .....	33
Section 7.1 Marina Licenses and Permits .....	33
Section 7.2 Challenge to Lease.....	34
Section 7.3 Termination of Subleases.....	34
Article VIII CONSTRUCTION AND IMPROVEMENTS .....	35
Section 8.1 Capital Improvement Commitments .....	35
Section 8.2 Plan Approval. ....	37
Section 8.3 Quality of Construction.....	41
Section 8.4 Changes in Plans and Specifications.....	41
Section 8.5 Intentionally Deleted.....	41
Section 8.6 Right of Inspection.....	41
Section 8.7 Construction at Lessee’s Sole Expense.....	42
Section 8.8 Improvements to be Property of Lessee During Term.....	42
Section 8.9 Performance Bond and Payment Bond.....	42
Section 8.10 Approval of General Contractor. ....	43
Section 8.11 Construction Agreement Required Clauses.....	43
Section 8.12 Delivery of Plans.....	43
Section 8.13 City and Lessee to Join in Certain Actions.....	43
Section 8.14 Construction Obligations. ....	44
Article IX SECURITY DEPOSIT .....	45
Article X ENCUMBRANCE OR ASSIGNMENT OF LEASEHOLD .....	46
Section 10.1 Conditions of Financing.....	46
Section 10.2 No Waiver of Lessee’s Obligations or City’s Rights.....	54
Section 10.3 Waiver of Landlord’s Lien.....	54
Section 10.4 Third Party Beneficiary.....	55
Article XI ASSIGNMENT .....	55
Section 11.1 Transfers .....	55
Section 11.2 Master Sublease and Space Leases. ....	55
Section 11.3 Acceptable Owner & Permitted Transfers.....	57
Article XII USE OF PREMISES .....	57
Section 12.1 Use .....	57
Section 12.2 Public Use. ....	58
Section 12.3 Term of Subleases/Space Leases .....	58
Section 12.4 Municipal Slips .....	59
Section 12.5 Mooring Field .....	59
Section 12.6 Space Leases. ....	59

Article XIII NO REPRESENTATIONS BY CITY .....	59
Article XIV CITY NOT LIABLE FOR FAILURE OF WATER SUPPLY, ETC. ....	60
Article XV REPAIR AND ALTERATIONS .....	60
Section 15.1 General.....	60
Section 15.2 Parking.....	61
Section 15.3 Baywalk .....	61
Section 15.4 Park. ....	61
Section 15.5 Failure to Maintain.....	62
Section 15.6 Alterations.....	62
Article XVI OPERATION.....	63
Section 16.1 Operation of Marina.....	63
Section 16.2 Operator of Marina .....	63
Article XVII LESSEE TO COMPLY WITH LAWS .....	63
Section 17.1 Compliance with Laws .....	63
Section 17.2 Contest .....	64
Article XVIII INSPECTION BY CITY .....	64
Section 18.1 Inspection.....	64
Article XIX INSURANCE AND RECONSTRUCTION.....	65
Section 19.1 General Insurance Provisions .....	65
Section 19.2 Evidence of Insurance.....	65
Section 19.3 Required Coverages .....	66
Section 19.4 Premiums and renewals .....	67
Section 19.5 Adequacy Of Insurance Coverage. ....	67
Section 19.6 City May Procure Insurance if Lessee Fails To Do So.....	67
Section 19.7 Effect of Loss or Damage .....	67
Section 19.8 Proof of Loss.....	68
Section 19.9 Insurance Proceeds.....	68
Section 19.10 Reconstruction. ....	69
Section 19.11 Waiver of Subrogation.....	70
Section 19.12 Inadequacy of Insurance Proceeds.....	70
Section 19.13 No City Obligation to Provide Property Insurance.....	70
Section 19.14 Compliance .....	70
Section 19.15 Right to Examine .....	70
Section 19.16 Personal Property .....	70

Article XX REMEDIES; EVENTS OF DEFAULT .....	70
Section 20.1 Default by Lessee.....	70
Section 20.2 Remedies for Lessee’s Default. ....	72
Section 20.3 Right of Re-Entry.....	73
Section 20.4 Right to Relet. ....	73
Section 20.5 Lessee’s Continuing Obligations. ....	73
Section 20.6 Lessee Responsible for Space Lessees. ....	74
Section 20.7 Default by the City.....	74
Section 20.8 Force Majeure .....	74
Section 20.9 Remedies Cumulative; Waiver .....	75
Section 20.10 Remedies Preserved. ....	75
Section 20.11 Right to Cure.....	75
Section 20.12 Intentionally Deleted.....	75
Section 20.13 Dispute Resolution.....	76
Section 20.14 Expedited Arbitration of Development Disputes.....	76
Section 20.15 Disputes Regarding Disapproval of a Proposed Major Transferee or Lessee’s Diligent Pursuit of Marina Lawsuit Appeals or Reasonable Approval of Marina Consultant or Marina Standards. ....	78
Section 20.16 Plans and Data.....	81
Article XXI PROTECTION AGAINST MECHANICS’ LIENS AND OTHER CLAIMS; INDEMNIFICATION.....	81
Section 21.1 Lessee’s Duty to Keep Project Free of Liens.....	81
Section 21.2 Contesting Liens .....	82
Section 21.3 Indemnification .....	82
Section 21.4 Environmental Matters.....	83
Section 21.5 Limitation of City’s Liability.....	87
Article XXII CONDEMNATION .....	87
Section 22.1 Complete Condemnation. ....	87
Section 22.2 Partial Condemnation.....	88
Section 22.3 Restoration After Condemnation .....	89
Section 22.4 Temporary Taking .....	89
Section 22.5 Determinations.....	89
Section 22.6 Payment of Fees and Costs .....	89
Article XXIII COVENANT OF QUIET ENJOYMENT.....	90
Article XXIV SURRENDER OF THE LEASED PROPERTY .....	90
Section 24.1 Surrender.....	90

Article XXV NONDISCRIMINATION.....	91
Article XXVI ADDITIONAL RESPONSIBILITIES .....	91
Section 26.1 Dockage Rates.....	91
Section 26.2 Space Leases for Wet Slips.....	91
Article XXVII CONFLICT OF INTEREST.....	93
Article XXVIII HOLDING OVER.....	94
Article XXIX TIME IS OF THE ESSENCE.....	94
Article XXX MISCELLANEOUS PROVISIONS.....	94
Section 30.1 No Partnership or Joint Venture .....	94
Section 30.2 Recording, Documentary Stamps .....	94
Section 30.3 Florida and Local Laws Prevail .....	94
Section 30.4 No Conflicts of Interest/City Representatives not Individually Liable .....	95
Section 30.5 Notice.....	95
Section 30.6 Estoppel Certificates .....	96
Section 30.7 Provisions not Merged with Deed.....	97
Section 30.8 Titles of Articles and Sections .....	97
Section 30.9 Counterparts.....	97
Section 30.10 Successors and Assigns; No Third Party Beneficiaries .....	97
Section 30.11 Entire Agreement.....	98
Section 30.12 Amendments .....	98
Section 30.13 Non-Subordination of City’s Interest.....	98
Section 30.14 City Manager’s Delegated Authority.....	99
Section 30.15 Holidays .....	99
Section 30.16 No Brokers .....	99
Section 30.17 No Liability for Approvals and Inspections.....	99
Section 30.18 Radon .....	99
Section 30.19 Lessee Entity.....	99
Section 30.20 Inflation Adjustments.....	100
Section 30.21 Standard of Conduct .....	100
Section 30.22 Waiver of Consequential Damages.....	100
Section 30.23 Reservation of Rights.....	100

## List of Exhibits and Schedules

<b>EXHIBIT “A”</b>	<b>Acceptable Owner Definition</b>
<b>EXHIBIT “B”</b>	<b>Certificate of Formation</b>
<b>EXHIBIT “C”</b>	<b>Public Benefit Improvements</b>
<b>EXHIBIT “D”</b>	<b>Mandatory Project Components</b>
<b>EXHIBIT “E”</b>	<b>Area 1 Standard</b>
<b>EXHIBIT “F”</b>	<b>Form of Recognition Agreement</b>
<b>EXHIBIT “G”</b>	<b>Marina Improvements</b>
<b>EXHIBIT “H”</b>	<b>Baseline Park Components</b>
<b>EXHIBIT “I”</b>	<b>Marina Standard</b>
<b>EXHIBIT “J”</b>	<b>Residential Parcel Legal Description</b>
<b>EXHIBIT “K”</b>	<b>Parking Standards</b>
<b>EXHIBIT “L”</b>	<b>Construction Agreement Required Clauses</b>
<b>SCHEDULE “1-A”</b>	<b>Legal Description of Area 1</b>
<b>SCHEDULE “1-B”</b>	<b>Legal Description of Area 2</b>
<b>SCHEDULE “2”</b>	<b>Submerged Land Lease Rent Increase Example</b>



## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Lease”) is executed on the 15<sup>th</sup> day of March, 2021, by and between THE CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation (the “City”) and MB MARINA PARK, LLC, a Delaware 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 meetings, in compliance with Section 82-37 of the City Code; 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 July 29, 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.** The parties acknowledge and agree that, pursuant to Section 1.03(b)(1) of the City Code, this Lease and the rights and obligations herein are subject to and contingent upon the approval of this Lease by vote of a majority of the voters voting thereon in a City-wide referendum on November 3, 2020 (the “2020 Referendum”) or such later date in 2021 as further described in this Section (each, a “2021 Referendum” and together with the 2020

Referendum, each, a “Referendum”). In the event that the 2020 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Lessee may, within 90 days after the date on which it is determined that the 2020 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of this Lease in a 2021 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of this Lease in a 2021 Referendum or (b) within such ninety (90) day period, Lessee either fails to so notify the City or notifies the City that it wishes to terminate this Lease, then in any such event, this Lease shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder except as set forth below. In the event that, following Lessee’s request, the City Commission adopts a resolution calling for a 2021 Referendum and the 2021 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2021 Referendum occurred, this Lease shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder except as set forth below. In the event the Lease is deemed null and void pursuant to this Section 1.1, then 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 commence as of January 1, 2022.

**Section 1.2 Effective Date.** This Lease shall be effective on March 15, 2021 (“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.

“AIPP” means the City’s Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable.

“Air Rights Parcel PSA” means that certain purchase agreement by and between the City and Residential Developer, for the sale of the Residential Parcel as more particularly set forth therein.

“Alternate Easement Agreement” means an easement agreement in form and substance reasonably acceptable to Developer, Marina Lessee and the City that provides for the granting of the ARF Easements and the other limited, non-exclusive easements described in Section 8.2(b)(ii) by Residential Developer for the benefit of the Alternate Replacement Facilities (or any similar alternate replacement facilities by the City or any future lessee of the Leased Property in the event this Lease is not in effect).

**“Alternate Replacement Facilities”** means a commercial and retail facility having neighborhood-oriented retail uses, cafes and/or restaurants and office and marina uses, including outdoor seating created in connection with such uses; provided, however, the Alternate Replacement Facilities shall not include any Prohibited Uses. The Alternate Replacement Facilities shall be constructed by Lessee in Area 1 in the event that Developer is unable to obtain all final, non-appealable Replacement Facilities Project Approvals in accordance with the Development Agreement or complete the Replacement Facilities by the Completion Date or if the Development Agreement is terminated pursuant to the express termination rights set forth therein. The Alternate Replacement Facilities shall include the Mandatory Project Components set forth on Exhibit “D” and are subject to reimbursement to Lessee from the City to the extent of the Upland Improvement Credits.

**“Alton Road Improvements”** means those certain ROW improvements and enhancements, improvements and enhancements to the entrance to the Alternate Replacement Facilities and traffic calming.

**“Amortized Construction”** has the meaning ascribed to it in Section 3.1(b)

**“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.

**“Architect”** means the duly qualified, insured and reputable architect selected by Lessee as the architect for the Alternate Replacement Facilities and licensed to operate as an architect in the State of Florida.

**“ARF Concept Plan”** means the design of the Alternate Replacement Facilities prepared by the Architect, which ARF Concept Plan shall be Approved by the City Commission in accordance with Section 8.2(c).

**“ARF Easements”** means, at a minimum, perpetual easements granted by the Developer to the City and Marina Lessee at no charge to the City or Marina Lessee for the exclusive right to use, access, operate, maintain, demolish, install and construct improvements (including utility or other infrastructure improvements) on, across, in and over the Residential Parcel for the purposes of complying with all of the terms and conditions of this Lease including the Marina Lessee’s obligation to construct the Alternate Replacement Facilities in accordance with the Lease (or any similar alternate replacement facilities by the City or any future lessee of the Leased Property in the event this Lease is not in effect).

**“Arbitrator”** shall have the meaning ascribed to it in Section 20.15(a).

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

**“Area 1 Standard”** means the standard to operate and maintain Area 1, including the Replacement Facilities or Alternate Replacement Facilities, as applicable, all landscaping and

associated infrastructure, and the Baywalk in a first class physical and operational manner as evidenced by compliance with the requirements described on Exhibit “E”.

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

“**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 20.2(f).

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

“**Baseline Environmental Levels**” means the highest level of Hazardous Substances found to exist within Area 1, excluding areas beneath the existing Lessee Improvements, as are reflected on “Phase II” testings to be conducted by or on behalf of Developer prior to Commencement of Construction

“**Baseline Park**” means a contiguous 1 acre ground level park with concrete walkway, zoning-required landscaping, irrigation system and AIPP required art.

“**Baywalk**” means those portions of the baywalk extending from MacArthur Causeway to the north and the southern property line of the Murano Grande At Portofino Condominium, as more particularly described in the Baywalk Easements.

“**Baywalk Easements**” means, collectively, that certain Amended and Restated Grant of Baywalk Easement recorded in Official Records Book 18713, Page 133 and that certain Grant of Easements for SSDI South Drop-Off Parking and Access Easement Agreement recorded in Official Records Book 18626, Page 4514, each of the public records of Miami-Dade County, Florida.

“**Baywalk Improvements**” means any improvements and enhancements to the aesthetics or function of the Baywalk as permitted by the Baywalk Easements and any other such improvements to public access areas, rights of way and other related easement areas.

“**Board of Trustees**” means the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

“**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**” means a certificate of occupancy or certificate of completion, as applicable, (a) with respect to the Replacement Facilities, as specified in the Development Agreement or (b) with respect to the Alternate Replacement Facilities, for the buildings and structures comprising the Alternate Replacement Facilities, including the Mandatory Project Components, and in each case, shall include any such certificate designated as “Temporary” in nature. Nothing herein shall be deemed to modify the authority of the agency(ies) having jurisdiction to determine whether to issue any Certificate of Occupancy, nor shall any Certificate

of Occupancy be issued until Lessee has paid the City in full in cash for any and all ARF Completion Liquidated Damages hereunder.

**“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 Sections 8.2 and 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 Parties”** shall mean the officers, employees and agents of the City, each acting in their official capacities and instrumentalities of the City.

**“City’s Representative”** shall mean that person or those persons the City designates, from time to time, 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.

**“Claims”** means all claims, demands, actions, suits, causes of actions, proceedings, charges, complaints, orders, liability, actual damages, losses, reasonable, out-of-pocket costs and expenses of every kind and nature (including any reasonable, out-of-pocket attorneys’ fees and costs of litigation).

**“CPI”** has the meaning set forth in Section 30.20 herein.

**“Commencement Date”** shall mean January 1, 2022.

**“Complete Construction”** or **“Completion of Construction”** means, with respect to (i) the Replacement Facilities, the date Developer has completed the Replacement Facilities in accordance with the Development Agreement, or (ii) if applicable, the Alternate Replacement

Facilities, Lessee has completed the Alternate Replacement Facilities substantially in accordance with the Approved ARF Concept Plan and the plans and specifications therefor Approved by the City, and including the Mandatory Project Components, and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy for the Alternate Replacement Facilities have been satisfied and all applicable Governmental Authorities have issued a Certificate of Occupancy for the Alternate Replacement Facilities.

**“Completion Date”** means the Construction Completion Date for the Replacement Facilities as set forth in the Development Agreement.

**“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.

**“Construction Agreement(s)”** means collectively, any general contractor’s agreement, entered into by the Lessee, with respect to the construction of the Alternate Replacement Facilities, as applicable, as such Construction Agreement(s) may be amended or otherwise modified from time to time.

**“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 21.4(a)(vii).

**“Court of Appeal”** means, with respect to any Marina Lawsuit filed in Florida state court, the applicable District Court of Appeal of the State of Florida, and with respect to any Marina Lawsuit filed or removed to federal court, the applicable United States Court of Appeals.

**“Default Notice Procedure”** means delivery of a notice of intent to exercise default remedies, to all Lessee notice parties, via hand delivery or overnight delivery with a copy via email, with a legend in bold and all caps at the top of the notice that states the following: FINAL NOTICE OF FAILURE TO PAY FINES. FAILURE TO PAY SUCH FINES WITHIN TEN DAYS OF RECEIPT OF THIS LETTER WILL ALLOW THE CITY TO PURSUE ITS REMEDIES UNDER THE LEASE, INCLUDING THE REMEDY OF TERMINATION OF THE LEASE. The notice shall set forth the amount of the fines, the infraction that the fines relate to and the date by which such fines must be paid.

**“Default Rate”** means an interest rate equal to four percent (4%) 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.

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

**“Developer”** means Marina Park Commercial, LLC, as the developer of the Replacement Facilities.

**“Development Agreement”** means that certain Development Agreement for the construction of the Replacement Facilities and the Residential Project dated of even date herewith between the City, the Developer, and Residential Developer. Nothing contained in this Lease shall be deemed to modify or amend the City’s rights and remedies (or the Developer’s or Residential Developer’s obligations) set forth in the Development Agreement.

**“Development Arbitrator”** shall have the meaning ascribed to it in Section 20.14(a).

**“Development Dispute”** means any dispute between Lessee and City (acting in its proprietary capacity) arising prior to the Completion of Construction with respect to (i) whether Lessee’s proposed plans and specifications are consistent with the Approved ARF Concept Plan and/or include the Mandatory Project Components, (ii) Lessee’s proposed construction drawings are consistent with the Approved ARF Concept Plan, as it may be modified by the applicable Governmental Authorities and/or include the Mandatory Project Components or (iii) a modification to Approved Plans for 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 20.13(a).

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

**“Environmental Claim”** has the meaning ascribed to it in Section 21.4(a)(vi).

**“Environmental Condition”** has the meaning ascribed to it in Section 21.4(a)(i).

**“Environmental Delays”** means each of the following: (i) if, despite diligent good faith efforts, Lessee is unable to obtain final approval from the applicable Governmental Authorities, including Miami-Dade County Department of Environmental Resources Management, of protocols for remediation of any Hazardous Substances in, or, under or within the vicinity of, the Development Site, including a remedial action plan, within twelve (12) months of submittal by Lessee to the applicable Governmental Authorities of an initial plan for remediation; (ii) if Hazardous Substances are discovered under the Existing Improvements at levels that are at least fifty percent (50%) greater than the Baseline Environmental Levels; and (iii) the discovery of any Hazardous Substance not discovered in the Baseline Environmental Levels or an increase in levels from those discovered in the Baseline Environmental Levels that requires, for the first time,

remediation or an increased level of remediation than that needed to address the Baseline Environmental Levels.

**“Environmental Laws”** has the meaning ascribed to it in Section 21.4(a)(ii).

**“Environmental Permit”** has the meaning ascribed to it in Section 21.4(a)(v).

**“Event of Default”** has the meaning ascribed to it in Section 20.1.

**“Existing Marina Lease”** means that certain Lease Agreement dated June 24, 1983 between the City, as lessor, and Carner-Mason Associates, Ltd., as lessee, and joined in by the RDA, 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 dated as of October 23, 1991 between the City and Tallahassee Building Corp. ("TBC") and joined in by the RDA; (ii) Second Amendment to Marina Lease Agreement dated as of August 11, 1994 between the City and TBC; (iii) Partial Release of Lease dated December 27, 1995 between the City and TBC, recorded in Official Records Book 17077, Page 1193; (iv) Assignment and Assumption Agreement by and between TBC and Existing Marina Lessee effective as of March 1, 1997 and recorded June 11, 1997 in Official Records Book 17673, Page 2830 (v) Third Amendment to Marina Lease Agreement dated May 27, 1997, between the City and Existing Marina Lessee, as successor to TBC, and joined in by the RDA and recorded on June 11, 1997 in Official Records Book 17673, Page 2846; (vi) Memorandum of Lease Amendments, recorded May 29, 1997, in Official Records Book 17656, Page 4709; (vii) Fourth Amendment to Marina Lease Agreement dated April 15, 1998, among the City and Existing Marina Lessee and joined in by the RDA, recorded in Official Records Book 18391, Page 4862 ; and (viii) Partial Release of Marina Lease Agreement between the City and Existing Marina Lessee and joined in by the RDA, recorded in Official Records Book 18626, Page 4354, all of the Public Records of Miami-Dade County, Florida.

**“Existing Marina Lessee”** means Miami Beach Marina Associates, Ltd., a Florida limited partnership.

**“Fine Notice Procedure”** means delivery of a notice to pay fines, to all Lessee notice parties, via hand delivery or overnight delivery with a copy via email, with a legend in bold and all caps at the top of the notice that states the following: THIS IS A NOTICE OF FAILURE TO PAY FINES AS REQUIRED PER THE LEASE. The notice shall set forth the amount of the fines, the infraction that the fines relate to and the date by which such fines must be paid.

**“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”** 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; pandemics; any public health crisis requiring quarantine, business closures mandated by Governmental Authorities or shelter in place orders, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts and other natural disasters; 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

**“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/or 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 21.4(a)(iii).

“**Hearing**” has the meaning set forth in Section 20.14(b).

“**Hearing Date**” has the meaning set forth in Section 20.14(b).

“**Initial Marina Investment**” has the meaning set forth in Section 8.1(b).

“**Initial Lessee**” means MB Marina Park, LLC, a Delaware limited liability company.

“**Initial Purchase Price**” means an aggregate of \$15,000,000 consisting of Five Million Dollar (\$5,000,000.00) paid to the City at the closing of the Air Rights Parcel PSA, Five Million Dollars (\$5,000,000) paid to the City on or before January 1, 2022 and Five Million Dollars (\$5,000,000) paid to the City on or before September 1, 2022, all under the Air Rights Parcel PSA.

“**Institutional Lender**” means, any of the following entities that as of the date of closing of the financing (i) is not a Prohibited Person, (ii) with respect to those entities in clause (g), (h), (i), (j) and (k) below is not a Foreign Instrumentality (other than any of the member countries of the European Union, each as existing as of the Effective Date, United Kingdom, Norway, Switzerland, Canada and Mexico 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 Mortgages, has a net worth in excess of One Hundred Million Dollars (\$100,000,000) (as adjusted by inflation over the Term pursuant to Section 30.20 hereof), (B) with respect to those entities in clauses (a) through (e) and (i) and (k) below providing Mezzanine Loans, has a net worth in excess of Fifty Million Dollars (\$50,000,000) (as adjusted by inflation over the Term pursuant to Section 30.20 hereof) and (C) with respect to those entities in clauses (h) and (j) below has total assets (in name or under management) in excess of \$500,000,000 (as adjusted by inflation over the Term pursuant to Section 11.19 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) KS Real Estate Group, LLC, a Florida limited liability company, or any Affiliate thereof ("KS"), provided however, that at the closing of financing provided by KS, together with its Affiliates, in the aggregate, satisfies the minimum net worth requirement of \$50,000,000 and that neither KS nor any of its principals and/or members are a Prohibited Person or Foreign Instrumentality;

(l) any other source of funding, public or private, which is otherwise Approved by the City Manager.

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. Without limiting the foregoing, for reference purposes, in the case of any syndicated loan obtained by Lessee references herein to "Institutional Lender" shall include the administrative agent or collateral agent for the syndicate of lenders. 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 19.9(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 Commencement Date and end on December 31st of the year in which the Commencement 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 certificate of formation is on file with the City as set forth on Exhibit "B" and an organizational chart of Lessee is on file with the City.

**"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 by Lessee or Developer, as applicable, including the Marina Improvements and the Replacement Facilities or the Alternate Replacement Facilities, as applicable.

**"Mandatory Project Components"** means, if the Alternate Replacement Facilities are required to be developed by Lessee pursuant to this Lease, the components or other elements of the Alternate Replacement Facilities to be developed by Lessee, as further described on Exhibit "D".

**"Marina Consultant"** means the third party consultant hired by City at its sole cost and expense and Approved by Lessee to consult on the Marina Standard, provided that the Marina Consultant shall not be a third party who owns, operates or is employed by a competitor owner or operator of marinas.

**"Marina Improvements"** means the categories of improvements set forth on Exhibit "G" of which the Lessee may choose to implement as part of the Marina Investment, in its sole discretion, except where indicated as occurring during a specific time frame.

**"Marina Investment"** means an aggregate of Forty Million and no/100 Dollars (\$40,000,000.00) subject to reimbursement to Lessee by City to the extent set forth in the Upland Improvement Credits.

**"Marina Investment Costs"** shall mean the hard and soft costs to develop, construct and complete the Marina Improvements.

**"Marina Lawsuit"** means any lawsuit, action or proceeding challenging the termination or expiration of the Existing Marina Lease, the termination or expiration of any sublease

thereunder and/or the validity, execution or effectiveness of this Lease, the Master Sublease or the Recognition Agreement and to the extent challenged in connection with the foregoing agreements, the Reciprocal Easement Agreement and the Alternate Easement Agreement, or any tort or other Claims related to any of the foregoing. A Marina Lawsuit shall not include any lawsuit, action, proceeding, appeal or petition for writ of certiorari challenging the validity, legal propriety, issuance or execution, as applicable, of the sale of the Residential Parcel, the Purchase and Sale Agreement, the Replacement Facilities Project Approvals, the Project Amendments (as defined in the Development Agreement), the vacation of the City ROW Area (as defined in the Development Agreement) or the Development Agreement or any such challenge relating to any approval required under the City Code and/or the City Charter. Notwithstanding the foregoing, a lawsuit, action or proceeding that is brought in connection with a default by Master Sublessee, Developer or Residential Developer under the Master Sublease, Recognition Agreement, Reciprocal Easement Agreement or Alternate Easement Agreement shall not be considered a Marina Lawsuit.

**“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 standard to operate and maintain Area 2, including the marina and all landscaping and associated infrastructure, in a world class manner as evidenced by compliance with the requirements described on Exhibit “I”, as the Marina Standard may be amended from time to time but not less than once every ten (10) years during the Term on reasonable terms mutually agreeable to Lessee and the City. The City may consult with a Marina Consultant regarding the Marina Standard. If Lessee disagrees with any proposed updated Marina Standard by the City, Lessee shall, either independently or in consultation with a consultant engaged by Lessee at its sole expense, propose an alternate updated Marina Standard to the City. Any Dispute as to whether the City’s proposed updated Marina Standard or the Lessee’s proposed updated Marina Standard shall be the amended Marina Standard hereunder shall be resolved in accordance with Section 20.13.

**“Master Sublease”** means that certain initial Master Sublease Agreement between Lessee, as sublessor, and Master Sublessee, as sublessee, and any new master sublease between the City, as sublessor, and Master Sublessee, as sublessee, as contemplated by the Recognition Agreement and any new master sublease between City, as sublessor and a Protected Lender as contemplated by this Lease as any of the same may hereafter be modified, amended, supplemented and/or restated from time to time, provided that any modifications, amendments, supplements, or restatements affecting the Lessee’s and Master Sublessee’s rights and obligations as set forth herein or in the Recognition Agreement shall be subject to the City Manager’s Approval. If the initial Master Sublease Agreement expires or is terminated the Master Sublease shall mean any Master Sublease Agreement between Lessee as sublessor and any master sublessee Approved by the City Manager.

**“Master Sublessee”** means initially Marina Park Commercial LLC, and its successors and assigns that are permitted under or approved in accordance with the terms of the Master Sublease or if the initial Master Sublease expires or is terminated then any master sublessee Approved by the City Manager.

**“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 Commencement Date and ending four (4) years thereafter, \$1,250,000.00, subject to annual inflation adjustments pursuant to Section 31.20 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 30.20 hereof commencing on the sixth Lease Year.

**“Neutral”** has the meaning ascribed to it in Section 20.16.

**“Notice of Dispute”** has the meaning ascribed to it in Section 20.16.

**“Notice to Proceed with ARF”** has the meaning ascribed to it in Section 8.2(b)(i).

**“Operating Plan”** means that certain policies and procedure manual prepared by Lessee and used in the ordinary course of business.

**“Outside ARF Completion Date”** has the meaning ascribed to it in Section 8.2(b)(v).

**“Park”** means, as applicable, the ground-level public park located within the Leased Property being not less than one contiguous acre to be constructed by Developer as part of the Replacement Facilities pursuant to the Development Agreement or the ground-level one-acre Baseline Park to be constructed by Lessee as part of the Alternate Replacement Facilities pursuant to this Lease.

**“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 Existing Marina Lessee, the City and the RDA dated as of December 1, 1999 as amended by (i) that certain First Amendment to Parking Facility Management and Operation Agreement for the Miami Beach Marina, dated December 20, 2002, by and among Existing Marina Lessee, the City and the RDA, and (ii) that certain Second Amendment to Parking Facility Management and Operation Agreement for the Miami Beach Marina, dated April 30, 2003, by and among Existing Marina Lessee, the City and the RDA, all as assigned to and assumed by Lessee pursuant to that certain Assignment and Assumption of Parking Facility Management and Operation Agreement dated as of the Effective Date by and among the City, the RDA, Existing Marina Lessee and Lessee.

**“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 thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements, in compliance with Florida Statutes Section 713.23 and otherwise 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.

**“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.

**“Predecessor Marina Lessees”** means any predecessor lessee of Existing Marina Lessee as a lessee under the Existing Marina Lease.

**“Prohibited Changes”** means (A) with respect to the Alternate Replacement Facilities, any changes to the Approved plans and specifications for the Alternate Replacement Facilities that result in any of the following except to the extent 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 which are required because of Governmental Requirements: (i) a failure of the Alternate Replacement Facilities to contain any of the Mandatory Project Components; (ii) a material change in the design of any of the Mandatory Project Components as reflected in the Approved plans and specifications for the Alternate Replacement Facilities; (iii) a material change in the massing of the development as reflected in the Approved plans and specifications for the

Alternate Replacement Facilities; or (iv) any change that materially alters the design of the façade of the Alternate Replacement Facilities, or otherwise materially alters the design of the exterior appearance of the Alternate Replacement Facilities as reflected in the Approved plans and specifications for the Alternate Replacement Facilities; or (B) with respect to the Marina Improvements, (i) any material changes or additions to the categories of Marina Improvements, or any material change to the scope of the Alton Road Improvements, or the scope of the Baywalk Improvements, except to the extent 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 which are required because of Governmental Requirements and (ii) any change, including reconfiguration of the docks at the marina, affecting the ability of the marina to accommodate vessels of varying sizes, except to the extent previously Approved in a writing executed by the City Manager and expressly providing that the City Managing is thereby Approving a Prohibited Change, provided that such Approval shall not be unreasonably withheld.

**“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.

**“Prohibited Use”** means any of the following purposes:

- (i) the sale, as its principal business purpose, of any merchandise which such Person in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise;
- (ii) the sale of insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire;



(iii) a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale;

(iv) the sale of medical marijuana or paraphernalia incidental thereto;

(v) coinbox entertainment (pinball, video games, moving pictures operated by coins);

(vi) casino gambling, or games of chance or reward;

(vii) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including “adult entertainment establishments” and “adult” bookstores) or extra-hazardous;

(viii) any purpose that constitutes a nuisance of any kind (public or private); provided however, the following shall not constitute a nuisance: marina uses or marina support operations and events; outdoor dining and beverage service or patio uses associated with Space Lessees (subject to clause (i) above); or activities associated with the use of the Park, to the extent not prohibited by the City Code.

(ix) check cashing facilities;

(x) pawn shops;

(xi) the sale of firearms;

(xii) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops;

(xiii) the sale of religious artifacts and religious books;

(xiv) places of worship;

(xv) consular, legation or any other offices of foreign governments;

(xvi) tire sales;

(xvii) the sale of major appliances as a primary business;

(xviii) in any manner that will violate any approvals of applicable Governmental Authorities, Certificate of Occupancy or certificate of use for the Leased Property, or which will violate any Governmental Requirements; and

(xix) free-standing outdoor bars or entertainment (unless otherwise permitted in accordance with City Code).

Such Prohibited Uses shall be reviewed and amended on terms mutually agreeable to the City and Master Lessee not less than once each twenty (20) years.

**“Project Approvals Delays”** means any revisions required by the Design Review Board and/or Planning Board to the Approved plans and specifications for the Alternate Replacement Facilities that would require revisions to the Mandatory Project Components or the inclusion of any Prohibited Changes.

**“Prosecution Dispute”** has the meaning ascribed to it in Section 20.16.

**“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 Benefit Improvements**” means the improvements to the Park in excess of the Baseline Park, including resiliency improvements, enhancements to the Baywalk and Alton Road and art within the Park and the Alternate Replacement Facilities in excess of the requirements of AIPP, as described on **Exhibit “C”** attached hereto.

“**Public Charges**” has the meaning ascribed to it in Section 6.1(a)

“**RDA**” has the meaning ascribed to it in the recitals.

“**Reciprocal Easement Agreement**” means that certain reciprocal easement and operating agreement entered into among the City, the Lessee, Master Sublessee and the Residential Developer and recorded in the Public Records of Miami-Dade County, Florida contemporaneously with the closing under the Air Rights Parcel PSA, granting certain rights and easements over, under, and upon, and governing the rights and obligations of the parties thereto with respect to the ownership, operation and development of, Area 1 and the Residential Parcel, which shall be recorded in the public records of Miami-Dade County, Florida and shall be in form and substance reasonably approved by the City, Lessee, Master Sublessee and Residential Developer on or before the Effective Date.

“**Recognition Agreement**” means that certain Recognition Agreement by and among the City, Lessee and Marina Lessee and attached as **Exhibit “F”** hereto.

“**Reconstruction Work**” has the meaning ascribed to it in Section 19.9(b)(i).

“**Rent**” means all payments characterized as rent hereunder, including Base Rent, Amortized Construction Rent, Public Charges, and fines and other amounts due under Section 5.2, Section 5.3, Section 6.1(c), Section 15.5 and Section 16.1.

“**Replacement Facilities**” means the Commercial Retail Project (as defined in the Development Agreement) to be completed by the Developer pursuant to the Development Agreement.

“**Replacement Facilities Project Approvals**” means those Project Approvals (as defined in the Development Agreement) and further described in the Development Agreement which shall be obtained by Developer.

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

“**Residential Parcel**” means that portion of the City’s property located adjacent to the Leased Property and described on **Exhibit “J”** attached hereto, as any updated legal description may be modified by agreement between the Lessee, Developer, Residential Developer and the City in accordance with the Development Agreement and Lessee shall approve such modifications to the extent reflecting the final legal description thereof based upon the Replacement Facilities Project Approvals and the final, as-built structures.

“**Residential Developer**” means Marina Park Residential, LLC, a Delaware limited liability company.

“**Residential Project**” means the residential project to be developed by Residential Developer pursuant to and in accordance with the Development Agreement, which is to be located on the Residential Parcel.

“**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.

“**SLL Rent**” has the meaning ascribed to it Section 2.4(b).

“**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, including any wet slips.

“**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, including any wet slips, pursuant to a Space Lease.

“**Special Event**” has the meaning ascribed to it in Section 15.4.

“**Stay**” has the meaning ascribed to it in Section 20.2(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 22.1(a).

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

“**Unavoidable Delay**” means a delay that (a) if occurring after commencement of construction, directly impacts the progress of the Work or the Marina Improvements, as applicable, (b) is beyond the reasonable control of such Party incurring the delay, and (c) is not due to a negligent or intentional act, error or omission of such Party. Subject to the foregoing criteria, “Unavoidable Delay” includes each of the following: (i) any Force Majeure Event; (ii) Project

Approvals Delays; and (iii) Environmental Delays, in each case, which prevents or actually delays performance. "Unavoidable Delay" shall not include technological impossibility, failure of equipment supplied by Lessee or its contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Lessee or its contractor to secure the required permits for prosecution of the Work. If two or more separate events of Unavoidable Delay are concurrent with each other, Lessee shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Lessee shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Lessee shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition constitute an "Unavoidable Delay" with respect to such Party, (ii) nor shall any delay arising from a Party's default under this Agreement, any Construction Contract or any other construction agreements, constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder. The times for performance set forth in this Lease shall be extended to the extent performance is delayed by Unavoidable Delay; provided Lessee notifies the City in writing not later than thirty (30) days after the occurrence of such Unavoidable Delay of the occurrence thereof. Failure to provide timely notice, as set forth herein, shall be a waiver of any claim by Lessee alleging an Unavoidable Delay.

**"Upland Improvement Credits"** means, with respect to Alternate Replacement Facilities, reimbursement by the City of up to Five Million Dollars (\$5,000,000.00) if the City retains more than Five Million Dollars (\$5,000,000.00) of the Initial Purchase Price under the Air Rights Parcel PSA. If the City retains between \$5,000,000.00 and \$10,000,000.00 of the Initial Purchase Price then such excess amount up to \$5,000,000 will be split evenly between the City and Lessee with City's share to be applied to the Public Benefit Improvements to be coordinated with Lessee's construction of the Alternate Replacement Facilities and Lessee's share to be reimbursed to Lessee as it incurs additional costs of design, construction, permitting and fees after Lessee has expended at least \$20,000,000 on the Alternate Replacement Facilities, as evidenced by an accounting of all such previously incurred costs of design, construction permitting and fees expended by Lessee, together with proof of payment and other supporting documentation reasonably requested by the City. If the City retains between \$10,000,000.00 and \$15,000,000.00 of the Initial Purchase Price then such excess amount up to \$10,000,000 will be split evenly between the City and Lessee with City's share to be applied to the Public Benefit Improvements to be coordinated with Lessee's construction of the Alternate Replacement Facilities and Lessee's share to be reimbursed to Lessee as it incurs additional costs of design, construction, permitting and fees after Lessee has expended at least \$17,500,000 on the Alternate Replacement Facilities, as evidenced by an accounting of all such previously incurred costs of design, construction permitting and fees, together with proof of payment and other supporting documentation reasonably requested by the City. For the avoidance of doubt, notwithstanding anything to the contrary set forth herein, the City shall retain the first \$5,000,000 of the Initial Purchase Price under the Air Rights Parcel PSA for the City's use in the City's sole discretion.

**"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.**

(a) The City hereby leases unto the Lessee, and Lessee hereby leases from the City, 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-A annexed hereto and made part hereof (“**Area 1**”), as such area may be amended upon Design Review Board approval and Completion of Construction of the Replacement Facilities to reflect the final, as-built structures on the Residential Parcel. If the “Vesting Date” (as defined in the Development Agreement) does not occur, Area 1 shall be further amended to include the portion of the Residential Parcel up to the greater of a height (i) of fifty (50) feet (as measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City’s Land Development Regulations, including Section 142-1161 of the City Code) or (ii) as required to permit the construction of the Alternate Replacement Facilities as set forth herein as part of Area 1 upon the occurrence of termination of the Development Agreement as further set forth herein in Section 8.2(b)(ii), in each case, subject to applicable Governmental Requirements.

(b) Appurtenant to Area 1, Lessee shall have the right to use the tract designated as Area 2 on Schedule 1-B (“**Area 2**”) in accordance with and subject to that certain Submerged Land Lease effective as of January 21, 1986 between the Board of Trustees, the City and the RDA and recorded in Official Records Book 16509, Page 3694 of the Public Records of Miami-Dade County, Florida, as modified by that certain Submerged Land Lease effective as of April 28, 2010 and recorded in Official Records Book 25719, Page 662 of the Public Records of Miami-Dade County, Florida (collectively, and 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, as such Submerged Land Lease may be expanded in accordance herewith (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**”).

(c) As to Area 1, the City represents and warrants that it has good and marketable and insurable fee simple absolute title, there are no mortgages encumbering the Leased Property given by the City and to the City’s knowledge, without duty of inquiry, the Leased Property is free and clear of all charges, liens and encumbrances of any nature, created by the City, except for easements, licenses, rights of way, and other similar restrictions of record to allow Lessee to be able to operate the Leased Property in accordance with this Lease, including the Reciprocal Easement Agreement and the Development Agreement.

(d) As to Area 2, the City represents and warrants that it holds the leasehold interest under the Submerged Land Lease and Lessee has the right to operate and utilize the Submerged Land Lease Area to operate the Leased Property in accordance with this 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 and in accordance with the Parking Garage Leases and the Parking Management Agreement. The City hereby grants to Lessee an irrevocable, exclusive license, coterminous with the term of the Parking Garage Leases but expiring not later than the end of the Term, to park vehicles on and in, and to use the Parking Garages, for all purposes set forth in and in accordance with the Parking Garage Leases. Notwithstanding anything to the contrary contained in this Lease, the City agrees to provide to Lessee with areas sufficient to accommodate an aggregate of approximately five hundred sixty-seven (567) parking spaces within the Parking Garages, which spaces Lessee shall use and cause to be used in accordance with the Parking Garage Leases, the Parking Management Agreement and the Parking Standards (to the extent not covered in the Parking Management Agreement); provided that Lessee agrees, to reserve and designate not less than twenty-five (25) parking spaces within the Parking Garage located within the Yacht Club at Portofino Condominium, for use by the general public and marina guests and to either issue fobs or alter the access control system, at Lessee’s election, to allow access or to provide for same in another manner mutually agreed upon by the City and Lessee. The City represents and warrants that (i) the Parking Garage Leases are in full force and effect, (ii) the City has not received written notice of any default under the Parking Garage Leases except with respect to a claim relating to the Murano at Portofino garage as set forth in that certain letter dated July 14, 2020 from Halpern Rodriguez, LLP on behalf of Murano at Portofino Condominium Association Inc. to the City (the “**Murano/Portofino Letter**”) and (iii) except for claims set forth in the Murano/Portofino Letter, the City has paid all rent and other sums owing under the Parking Garage Leases and is not aware of any other defaults as a result of City actions under the Parking Garage Leases, or events which may become defaults as a result of City actions with giving of notice. Lessee is, and will be, a third party beneficiary of the Parking Garage Leases to the extent permitted in accordance with the terms of the Parking Garage Leases. Prior to the Effective Date, Lessee shall cause the Existing Marina Lessee to execute and deliver an assignment of the Parking Management Agreement. The City shall use commercially reasonable efforts to resolve the claims set forth in Murano/Portofino Letter in a manner to prevent any adverse impact on Lessee’s license of parking spaces in such Parking

Garage, and Lessee shall not have any liability in connection with the resolution of such claims. The City shall be responsible for obtaining any amendments or assignments of the Parking Garage Leases to the extent necessary to provide Lessee with the use of the parking spaces described and Lessee shall reasonably cooperate with the City in connection therewith. Lessee shall cause the Parking Garages to be used and maintained in accordance with the Parking Garage Leases, the Parking Management Agreement and the Parking Standards and to the extent there is a conflict between the Parking Management Agreement and the Parking Standards, the Parking Standards shall prevail. Subject to the Lessee's use and maintenance obligations with respect to the Parking Garages as set forth in this Lease, City shall use its good faith, diligent efforts to keep the Parking Garage Leases in full force and effect during the Term. In the event that City is prevented from providing Lessee with the use of any of the spaces described herein after using commercially reasonable good faith efforts to provide, the City will, at its sole cost and expense, provide Lessee with the use of the same number of spaces as are affected in alternate parking facilities in close proximity to the Leased Property and if such alternate parking facilities are not mutually agreed, the City shall provide a rent credit to Lessee based on \$70 per month (as such amount shall be adjusted in accordance with CPI) per space lost. Any alternate parking facility shall meet the minimum parking standards as set forth in the City Code. However, if the City does not use commercially reasonable efforts to provide such alternate parking or fails to identify sufficient alternate parking to comply with the City Code, Lessee shall be entitled to exercise its remedies under Section 20.7 hereof.

**Section 2.3 Utility and Public Access.** The City will grant to Lessee such easements located on property owned by the City and adjacent to the Leased Property, as are reasonably necessary to permit Lessee access to operate and perform its obligations under the Lease, as required in connection with the Lessee Improvements.

**Section 2.4 Submerged Land Lease.**

(a) The City and the RDA represents and warrants to Lessee that the Submerged Land Lease is current and in good standing and will use commercially reasonable efforts to obtain an estoppel from the Board of Trustees under the Submerged Land Lease within 30 days before the Commencement Date. 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(b) and Section 2.4(f).

(b) Within a reasonable period of time prior to the expiration of the term (and each extension thereof) of the Submerged Land Lease, Lessee, with best cooperation efforts from the City and the RDA, shall use Lessee's 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 so that the Submerged Land Lease or a new submerged land lease shall always be in full force and effect during the Term or provide a continuous uninterrupted right for Lessee to use and operate in Area 2. Lessee, with the cooperation of the City and the RDA, shall commence Lessee's best efforts with the Board of Trustees to obtain such extension(s) of the Submerged Land Lease at the earliest permissible date permitted by the terms of the Submerged Land Lease prior to the then scheduled termination date of the Submerged Land Lease in accordance with the terms of the Submerged Land Lease. The City or Lessee each shall promptly notify the other Party when it receives notice that an extension is obtained from the Board

of Trustees. Lessee agrees that so long as the Submerged Land Lease is in effect, beginning in the year 2053, Lessee will be responsible, as additional Rent payable to the City, for fifty percent (50%) of the increases in the rent due under the Submerged Land Lease (the “**SLL Rent**”) above the SLL Rent due in 2053, which rent shall be calculated by increasing the SLL Rent due in year 2020 by CPI through 2053. Lessee’s fifty percent (50%) share of increases in SLL Rent after 2053 will be capped at Seven Hundred Fifty Thousand Dollars (\$750,000) per year. The cap will increase over the amount of \$750,000 by CPI per year from 2053 until the end of the Term. **Schedule 2** attached hereto and made a part hereof depicts a sample calculation of such increases for illustrative purposes only. The City agrees to reasonably cooperate, at Lessee’s sole cost and expense, with Lessee’s efforts to reduce fees in connection with the Submerged Land Lease. Notwithstanding the foregoing, Lessee acknowledges that the City cannot guarantee any renewal or extension of the Submerged Land Lease or any new submerged land lease over Area 2 will be granted or conveyed by the Board of Trustees or any successor thereto. For the avoidance of doubt, the City’s and RDA’s “best cooperation efforts” hereunder shall not require the City or the RDA to expend any funds, violate any Governmental Requirement or file any lawsuit, action or other proceeding or take any similar action (except as set forth below); provided, however, the City and the RDA shall join in any applications or agreements reasonably requested by Lessee in connection with such extension. City agrees that it will not sell the Leased Property to any non-governmental Person if it would cause the loss of riparian rights that would cause the loss of Lessee to have the use of Area 2 under the Submerged Land Lease.

(c) If Lessee wants to extend the term of the Submerged Land Lease prior to the City and the RDA commencing their efforts to extend the term of the Submerged Land Lease, then the City and the RDA shall, at no cost to the City or RDA, other than administrative costs, reasonably cooperate with the Lessee 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 and RDA 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, subject to clause (b) above and without modifying any of Lessee’s obligations thereunder, such payment of additional rent shall cease after the time that the City and RDA would have had to seek an extension of the Submerged Land Lease.

(d) If notwithstanding Lessee’s best efforts and the City’s and RDA’s best cooperation efforts as described in clause (b) above, Lessee is unable to obtain an extension of the Submerged Lands Lease or a new submerged lands lease or other alternative continuous and uninterrupted rights for the Lessee to use and operate in Area 2, then, notwithstanding anything to the contrary in this Lease, the Base Rent due hereunder shall consist solely of the Annual Percentage Rent (plus any Amortized Construction Rent, if applicable), and the Minimum Annual Guaranteed Rent and Lessee’s obligations with respect to Area 2 shall not apply until such time as the City and RDA and/or Lessee has secured such rights of Lessee to use and operate in Area 2.

(e) The City and RDA agree that they will comply with all of their obligations under the Submerged Land Lease and timely execute all reasonable documentation to keep the Submerged Land Lease in full force and effect and to obtain any extensions to insure that it coincides with the Term. If the Board of Trustees fails to renew the Submerged Lands Lease, Lessee, at its expense, shall have the right to contest such non-renewal on behalf of the City and RDA, and Lessee shall indemnify, defend and hold the City harmless in connection with any such



contest except to the extent of any default of City under the Submerged Land Lease. If Lessee becomes aware of any failure by the City or RDA to comply with the City's and RDA's obligations under the Submerged Lands Lease, Lessee shall deliver written notice to the City and provide the City with a reasonable opportunity to cure (which cure period shall be of such length as to provide Lessee ample time to cure if City fails to do so) and if after receipt of such notice and expiration of such cure period, the City fails to cure any violation of the Submerged Land Lease, Lessee shall be afforded the opportunity to exercise such cure and may act on behalf of the City and RDA in remedying any defaults of the City and RDA at City's expense. Lessee may request that the City provide Lessee with a limited power of attorney, if necessary, for the purpose of securing an extension of the Submerged Land Lease, which request shall be accompanied by the form of power of attorney, which shall be subject to the City Manager's and the City Attorney's Approval, each in its sole discretion. If the City Manager and City Attorney Approve the request, each in its sole discretion, the City shall provide Lessee with such approved limited power of attorney for the purpose of securing an extension of the Submerged Land Lease. Notwithstanding anything to the contrary herein, if the request to provide a power of attorney is denied then the City and RDA shall use diligent good faith efforts to obtain the requested extension.

(f) The City and RDA, at Lessee's sole cost and expense, shall reasonably cooperate with Lessee in connection with Lessee's efforts to obtain 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, which expansion shall be subject to approval by the City Commission and the RDA, each in its sole discretion. Such administrative cooperation by the City shall include communicating with the Board of Trustees and negotiating an amendment to the Submerged Land Lease, to the extent Lessee is not authorized to do so, and documenting such expansion on terms. The terms and documentation of any such expansion shall be reasonably acceptable to Lessee and subject to the approval by the City Commission and the RDA, each in its sole discretion. In the event that the Submerged Land Lease is expanded then Lessee shall pay as additional Rent the increased per square foot charge under the Submerged Land Lease attributable to the additional number of square feet added to the Submerged Land Lease and the legal description of Area 2 shall be amended to reflect the increased square footage. Lessee shall be responsible for obtaining any required consent or amendment to the Submerged Land Lease required in connection with the grant of the rights to use Area 2 by Lessee and the City and RDA shall reasonably cooperate with Lessee, at Lessee's sole cost, in connection therewith. Lessee shall be responsible for securing any easements, riparian rights or other interests required by the Board of Trustees to expand the Submerged Land Lease, provided, however, that City agrees to reasonably cooperate to grant Lessee any interests held by the City that Lessee may need in connection with the expansion. Lessee shall be responsible, as additional Rent, for any increase above the then-existing SLL Rent that is charged under the Submerged Land Lease as a result of the expansion. Subject to the additional terms of any proposed expansion, this Lease contemplates that the City Administration is generally supportive of an expansion based on the Lessee's agreement herein to pay for all increases in SLL Rent in connection therewith; provided, however, nothing contained herein shall be deemed to modify the City Commission's or RDA's approval rights hereunder.

**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."

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

### **Article III CONSIDERATION**

**Section 3.1 Rental.** 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 or Master Sublessee or any of their respective affiliates 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 Eight Hundred Fifty (850) free passes will be issued to tenants and employees of the Marina Project and the use associated with such free passes shall not be subject to percentage payment set forth in this section; plus

(iv) Ten percent (10%) of all other Gross Receipts received by Lessee or Master Sublessee or any of their respective affiliates operating all or a portion of the Leased Property during such Lease Year; provided, however, during the first through fourth Lease Years, Lessee's obligation under this Section 3.1(a)(iv) shall be reduced to seven and one-half percent (7.5%).

(b) If the Annual Percentage Rent exceeds the Minimum Annual Guaranteed Rent during the first through fourth Lease Years, then Lessee shall pay the Minimum Annual Guaranteed Rent to the City during such four (4) year period, and the payment of all Annual Percentage Rent in excess of the Minimum Annual Guaranteed Rent shall be deferred during such four (4) year period, and at the end of the fourth Lease Year, the cumulative Annual Percentage Rent due over such period in excess of the Minimum Annual Guaranteed Rent actually paid by Lessee during such period shall be amortized over a period of fifteen (15) years (180 months) (the "**Amortized Construction Rent**"). The Amortized Construction Rent shall be payable in equal monthly installments, together with the Base Rent, commencing in the first month of the fifth Lease Year and continuing for fifteen (15) years thereafter. For the avoidance of doubt, during the first through fourth Lease Years (and at all times during the Term) Lessee shall timely deliver to

the City the detailed report of Gross Receipts pursuant to Section 3.2 and the detailed annual report of Gross Receipts pursuant to Section 5.2, as and when required hereunder.

**Section 3.2 Method of Payment.** 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:

(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 XX 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 by the City within thirty (30) days after the City receives written notice of and confirms its agreement with such overpayment and shall bear interest at the Default Rate from the expiration of such 30-day period 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 Commencement 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 RECEIPTS**

### **Section 4.1 Gross Receipts Defined.**

(a) The term “**Gross Receipts**” means, whether received by Lessee, Master Sublessee or both (but without duplication): (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 the Leased Property or any part thereof by Lessee or Master Sublessee, 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 or Master Sublessee’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 or Master Sublessee, in the normal and ordinary course of their respective operations, would credit or attribute to their respective businesses 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, including rents, received by Lessee or Master Sublessee resulting from occupancy or use of the Leased Property or any part thereof by any independent, third-party Space Lessee, or parties operating through any Space Lessee, including Gross Receipts received by Lessee or Master Sublessee from any independent third-party Space Lessee operating dry stack or wet slip facilities on the Leased Property; (v) all Gross Receipts including rents, received by Lessee or Master Sublessee from any independent, third party Space Lessees operating dry stack or wet facilities on the Leased Property; and (vi) all Gross Receipts received by Lessee or Master Sublessee resulting from occupancy or use of the Leased Property which are neither included in nor excluded from Gross Receipts from any other provision of this Lease, but without duplication.

(b) 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 comparable commercial/retail areas in the Marina Project that are not operated by Lessee or its Affiliates, or if the Parties disagree on the calculation of such fair market rent or whether such other commercial/retail areas are comparable to the areas operated by Lessee or its Affiliates, then the fair market base rent for such areas operated by Lessee or its Affiliates shall be determined by

a reputable, experienced third-party appraiser reasonably Approved by the City and Lessee, at Lessee's expense if the appraiser determines that fair market rent is greater than 10% of the amount set forth by Lessee and at City's expense if the appraiser determines that fair market rent is up to 10% of the amount set forth by Lessee, 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.

**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 PARTNERSHIP**

**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 five (5) years 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. Records copied by the City, if any, shall be subject to the requirements of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes ("**Public Records Act**"). To the fullest extent permitted by law, the City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law; provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by the City under this Lease.

**Section 5.2 Annual Report.** On or before the fifteenth (15th) day of April following the Lease Year during which the Commencement Date occurs, and on or before the fifteenth (15th) day of each successive April following the close of 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 either or both of the following remedies (a) to make an audit pursuant to the provisions of Section 5.3 or (b) to treat any such omission continuing after said fifteen (15) days' notice as a breach of this Lease with City's sole remedy to levy, by written notice, a fine upon Lessee in an amount equal to 1/10<sup>th</sup> of one (1) percent of Minimum Annual Rent for each day until Lessee remits such annual report or statement. City shall provide Lessee with a notice of non-payment of any such fines, which shall be deemed additional Rent, pursuant to the Fine Notice Procedure requesting payment within 30 days of receipt of such notice. If the fines are not paid then the City shall send a final notice pursuant to the Default Notice Procedure and ten days thereafter if the fines have not been paid then the City may treat as an Event of Default entitling the City to exercise its remedies in Article XX below. Notwithstanding the foregoing, once in each 10 year period of the Term, Lessee shall have an additional thirty (30) day cure period before any fines may be levied.

**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, together with interest at the Default Rate,

shall be payable by Lessee, as additional Rent, in any event within thirty (30) days after receipt of written demand therefor. Such demand for payment shall be sent pursuant to the Fine Notice Procedure. If payment is not made then the City shall send a final notice pursuant to the Default Notice Procedure and ten days thereafter if the payment has not been made then the City may treat as an Event of Default entitling the City to exercise its remedies in Article XX below. 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 prepare, keep or make available the same, then Lessee shall, upon demand, as City's sole remedy pay the reasonable cost of such audit and if Lessee refuses or is unable to provide such information after written request from the City for same, Lessee shall pay all reasonable costs incurred by the City in obtaining the information plus 135% of amounts found to be owing, if any, after the audit, and all such amounts shall be deemed additional Rent. If Lessee's failure to prepare, keep or make such records available is the result of fraud or willful misconduct on the part of Lessee, then City shall have the option to exercise its remedies under Article XX below. If in the course of any audit the City identifies a deficiency in excess of five percent (5%) in the amount of Base Rent, the City shall have the right to audit Lessee's books and records for the three (3) prior calendar years. If the City identifies any deficiencies in excess of five percent (5%) in the amount of Base Rent due as a result of an audit of any of those three (3) prior calendar years, the City shall have the right to audit an additional two (2) prior calendar years. Any dispute between the two audits which cannot be resolved by the Parties shall be resolved in accordance with Section 20.13 of this Lease. The costs of any audits which are the subject of a dispute resolved pursuant to Section 20.13 of the Lease shall be borne by the non-prevailing party in such dispute and if borne by Lessee shall be additional Rent. The cost of any audit(s) by the City which Lessee is required to pay pursuant to this Article shall be the cost charged to the City by its independent auditors, or if done by City personnel, the direct employee salary cost to the City for the time spent by said employees in performing such audit, but not in excess of what would have been charged to the City for the same service by the City's outside auditors.

**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 UTILITIES**

#### **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, or cause to be paid and discharged, before any fine, penalty, interest or cost may be added, any public charges that are charges similar in nature to

those set forth below and that are levied against all real property owners by a Governmental Authority having jurisdiction over the Leased Property, including the following (collectively “**Public Charges**”):

(i) All real and personal property taxes, all ad valorem real property taxes, all taxes on rents payable hereunder and under the Master Sublease and any Space Leases, restaurant taxes, and public assessments (including impact fees and other public charges); and

(ii) Special assessments pursuant to Section 6.3, electric, stormwater, 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 Commencement 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.

(c) Lessee, in addition to the Base Rent and all other payments due to the City hereunder, covenants to pay and discharge, or cause to be paid and discharged, before any fine, penalty, all common charges, assessments and other expenses assessed against the City and/or the Leased Property under the Reciprocal Easement Agreement.

**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 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 LEASE**

**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 Governmental Authorities. Lessee, at its sole cost and expense, shall be solely responsible for obtaining any such approvals and for complying with all Governmental Requirements applicable to the Leased Property. The City and/or RDA will use diligent and good faith efforts to cooperate with Lessee to obtain such approvals to the extent the City or RDA must do so or to otherwise cooperate with Lessee, at Lessee's sole cost and expense, 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. Lessee may request that the City provide Lessee with a limited power of attorney, if necessary, for the purpose of obtaining a specific license, permit or approval, which request shall be accompanied by the form of power of attorney, which shall be subject to the City Manager's and the City Attorney's Approval, each in its sole discretion. If the City Manager and City Attorney Approve the request, each in its sole

discretion, the City shall provide Lessee with such approved limited power of attorney for obtaining a specific license, permit or approval. For the avoidance of doubt, whether or not the City Manager or City Attorney approve such request, nothing contained herein shall limit the City's obligation to use diligent, good faith efforts to cooperate with Lessee.

**Section 7.2 Challenge to Lease.** In the event of any Marina Lawsuit, Lessee shall defend any such Marina Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to City. Lessee shall further indemnify and hold the City and the City Parties harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of, relating to or resulting from any Marina Lawsuit. The terms of this paragraph shall survive the expiration or any earlier termination of this Lease. If this Lease is successfully challenged in any Marina Lawsuit, and Lessee has used diligent, good faith efforts to defend any Marina Lawsuit and diligently pursued and exhausted all appeals thereof in good faith through the applicable Court of Appeal, and this 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 used diligent, good faith efforts to defend any Marina Lawsuit and diligently pursued and exhausted all appeals thereof in good faith through the applicable Court of Appeal prior to such termination, voiding or ineffectiveness of this Lease, then following such termination, voiding or ineffectiveness of this Lease, the City shall provide Existing Marina Lessee with a rent credit in an amount equal to that portion of the Initial Purchase Price paid to and retained by the City, which rent credit shall commence immediately but shall be amortized in equal monthly installments over a period of ten (10) years, provided that in the event the amount of the credit exceeds \$10,000,000, then the 10 year period shall be extended such that only \$1,000,000 will be amortized per year, which agreement shall be 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. In the event Lessee has not used diligent, good faith efforts to defend any Marina Lawsuit and diligently pursued and exhausted all appeals thereof in good faith through the applicable Court of Appeal, the City shall not provide any rent credit to Existing Marina Lessee. Any Dispute as to whether Marina Lessee has used diligent, good faith efforts to defend and diligently pursue and exhaust all appeals in good faith through the applicable Court of Appeal shall be resolved in accordance with Section 20.13.

**Section 7.3 Termination of Subleases.** Prior to commencement of the Term, Lessee shall use diligent good faith efforts to deliver to the City (a) reasonably satisfactory evidence of the termination or expiration of all subleases of the premises demised under the Existing Marina Lease and unconditional releases of the City from any and all Claims of all sublessees arising from or in connection with such subleases that are terminated prior to their expiration date, or (b) amendments to all unexpired or unexpired subleases evidencing the applicable sublessees' agreement to vacate and surrender the premises demised under the Existing Marina Lease prior to commencement of construction of the Replacement Facilities or Alternate Replacement Facilities, as applicable; provided, however, in the event any sublease of the premises demised under the Existing Marina Lease has not been so terminated or amended or unconditional releases are not

obtained on or before commencement of construction of the Replacement Facilities or Alternate Replacement Facilities, as applicable, then Lessee may nonetheless commence or permit Developer to commence the construction in accordance with and subject to the terms of this Lease and the same shall not constitute a default, provided that, in such event, Lessee hereby does and shall indemnify, defend and hold the City and City Parties harmless from and against any and all Claims arising from or in connection with any such unexpired, unexpired, unexpired or unamended sublease, and promptly following the early termination of any such sublease, Lessee shall deliver to the City reasonably satisfactory evidence of such termination and Lessee shall use good faith efforts to obtain an unconditional release of the City from any and all Claims of such sublessee at the time that Lessee receives a release of Lessee from such claims (for avoidance of doubt, the failure of Lessee to obtain such unconditional release of the City shall not be a default under this Agreement).

## **Article VIII CONSTRUCTION AND IMPROVEMENTS**

### **Section 8.1 Capital Improvement Commitments.**

(a) Lessee shall permit Master Sublessee to construct and complete the Replacement Facilities in accordance with the Development Agreement, provided, however, any failure by Master Sublessee to construct and complete the Replacement Facilities in accordance with the Development Agreement shall not be a default of Lessee hereunder provided that Lessee constructs and completes the Alternate Replacement Facilities in accordance with this Lease; and provided further that in the event of such failure by Master Sublessee, the City shall have the right under the Recognition Agreement to terminate the Master Sublease as further described therein. Lessee approves the development of the Replacement Facilities and the Park, as the same may be modified in accordance with the Development Agreement. Notwithstanding the foregoing, nothing contained herein shall be deemed to modify or waive any rights Lessee may have with respect to Developer, Master Sublessee or Residential Developer under any separate agreement by or among such Parties and to which the City is not a party.

(b) Lessee shall expend no less than the Marina Investment on Marina Investment Costs during the first thirty (35) years of the Term, subject to the escrow caps below, with no less than an aggregate of Fifteen Million Dollars (\$15,000,000.00) of the Marina Investment expended during the first ten (10) years of the Term (the “**Initial Marina Investment**”), and no less than an aggregate of Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) of the Marina 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 \$7,500,000 during the second ten (10) years of the Term. For avoidance of 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 \$12,500,000 *less* any expenditures in excess of \$15,000,000 made during the first ten (10) years of the Term subject to the escrow caps below. Each of the foregoing deadlines shall be reasonably extended for (i) Force Majeure in accordance with this Lease; and/or (ii) City Delays, if applicable. Notwithstanding the foregoing, Lessee’s obligation to expend the Marina Investment shall be subject to the effectiveness of the Submerged Land Lease. Notwithstanding anything to the contrary herein, Lessee shall have the ability to escrow certain amounts of Marina Investment

Costs, with the City, to the extent not spent, as follows: up to \$10,000,000 if \$15,000,000 not spent during the first ten years of the Term, up to an aggregate of \$12,500,000 in year 21, if Lessee has not spent an aggregate of \$27,500,000 in the first 20 years and up to an aggregate of \$15,000,000 in year 36 if Lessee has not spent an aggregate of \$40,000,000 in the first 35 years of the Term. The escrowed Marina Investment funds shall be released to Lessee by the City from time to time upon written request by Lessee to the City, which request shall be accompanied by an accounting of all costs of design, construction, permitting and fees for the Marina Improvements previously made by Lessee, together with proof of payment and other supporting documentation reasonably requested by the City, and such released funds shall be used by Lessee to perform additional Marina Improvements and shall not be used for repairs and maintenance. Any funds held in escrow shall accrue interest and such interest shall be released to Lessee upon written request in accordance with the foregoing procedure to expend on additional Marina Improvements (and not on repairs and maintenance) as and when the same are made following the expiration of the thirty-fifth (35<sup>th</sup>) Lease Year and when all funds that have been escrowed have been spent on Marina Improvements.

(c) If Developer does not obtain all final, non-appealable Replacement Facilities Project Approvals in accordance with the Development Agreement or if Developer does not construct the Replacement Facilities in accordance with the terms of the Development Agreement, 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 accordance with and subject to all of the terms and provisions of this Lease, including Section 8.2(c) below.

(d) For avoidance of doubt, and notwithstanding anything to the contrary contained in this Lease, Lessee shall be authorized to permit demolition of and shall demolish or cause to be demolished the existing 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, subject to clause (e) below. In the event that Developer has made improvements to Area 1 that will not be used in the Alternate Replacement Facilities, then Lessee, at its sole cost and expense will remove such improvements. In the event that Developer has not yet commenced construction on Area 1, then Lessee shall engage in site prep and demolition activities required in connection with building the Alternate Replacement Facilities which costs shall be attributed to the costs of the Mandatory Elements.

(e) Lessee shall perform and complete or cause to be performed and completed all work on the Leased Property, including the Marina Improvements, and Alternate Replacement Facilities, as applicable, in a manner that does not materially interfere with or affect ingress, egress or access to, or operations of, as applicable, Alton Road, the marina, the Parking Garages, the Replacement Parking Facility (once complete), the Baywalk or any neighboring properties. Subject to this Section 8.1(e), Developer shall perform and complete all work in a manner so that it does not cause the Baywalk to close or to be unsafe for use by the public throughout the progress of any work. Notwithstanding the foregoing, Lessee may, with prior Approval from the City Manager, close access to Alton Road and/or the Baywalk for temporary periods as reasonably necessary in connection with the performance of any work at the Leased Property, provided that

Lessee shall minimize the area and duration of such closure and provide temporary re-routing at all times during the period of such closure to the extent required by and in accordance with Governmental Requirements and all conditions of any regulatory agency having jurisdiction. If re-routing of the Baywalk is not reasonably feasible within the Leased Property, then the City shall make the nearest public right-of-way available for re-routing and to the extent the re-routed areas do not provide the public a reasonably equivalent enjoyment experience as that of the Baywalk closed, then the period of such closure of such portion shall not exceed ninety (90) days unless an alternate area of re-routing is provided that does provide such reasonably equivalent enjoyment experience.

(f) Lessee shall reasonably cooperate with the City in the event the City elects, in its sole and absolute discretion and at the City's sole cost, to make any Public Benefit Improvements to Area 1. In the event that City elects to make any Public Benefit Improvements, the City shall coordinate with the Developer or Lessee, as is applicable, to make such Public Benefit Improvements in coordination with other construction on Area 1 to minimize the length of construction in Area 1 and avoid damage to existing improvements. City shall not unreasonably disrupt the operations of Area 2 and shall not unreasonably disrupt the tenants, guests and residents on Area 1. The City shall cause any contractor performing work on behalf of the City to indemnify Lessee in connection with any Claims as a result of the improvements being made in connection with this Section 8.1(f).

**Section 8.2 Plan Approval.**

(a) Marina Improvements.

(i) Lessee shall submit the category of Marina Investment that it is electing to make to City Manager for Approval, however any Marina Improvement set forth on Exhibit G shall be deemed approved. Lessee shall submit plans and specifications and a schedule of performance for each component of the Marina Improvements prior to the commencement of any construction of such component. Lessee shall prepare such plans and specifications in accordance with known Governmental Requirements, in a good faith effort to achieve compliance with the Marina Standard and substantially comply with the schedule of performance, subject to Unavoidable Delays in accordance with this Lease, and City Delays, if applicable.

(ii) Within twenty-one (21) days of receipt of the notice of the category of Marina Investment that Lessee plans to implement, if the plans and specifications are for categories other than those listed on Exhibit G, or in connection with a Prohibited Change or contain modifications relating to categories other than those listed on Exhibit G or containing a Prohibited Change, then the City Manager shall notify Lessee, in writing, of its Approval of such plans and specifications or such 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 twenty-one (21) day period shall be deemed to constitute the City's conclusive Approval of the proposed plans and specifications or such modifications. Plans and specifications for categories listed on Exhibit G other than the Baywalk Improvements or the Alton Road Improvements are deemed approved.

(iii) If the City disapproves of any such plans and specifications or such 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 8.2(b), provided that the time period for approval or disapproval shall be fifteen (15) days.

(iv) Promptly following the City's Approval of plans and specifications or modifications for any component of the Marina Improvements that is required, Lessee shall, if required by the Submerged Land Lease, submit same to the Board of Trustees and all applicable Governmental Authorities for approval and shall pursue all such approvals with due diligence and in good faith and the City shall reasonably cooperate with Lessee, at Lessee's cost, to obtain same. Following the issuance of such approvals, Lessee shall prosecute completion of each component of the Marina Improvements substantially in accordance with plans and specifications Approved by the City Manager with all commercially reasonable diligence and in good faith, in good and workmanlike manner, and shall use diligent good faith efforts to prosecute the completion of such component in accordance with the schedule of performance Approved by City Manager, subject to delays for (A) Unavoidable Delay in accordance with this Lease, and/or (B) City Delays, if applicable.

(v) All plans for the components of the Marina Improvements located on Area 2 shall be in accordance with the Submerged Land Lease and all Governmental Requirements and of the Board of Trustees and other applicable authorities or agencies that govern marina operations.

(b) Alternate Replacement Facilities.

(i) If Developer does not obtain all final, non-appealable Replacement Facilities Project Approvals in accordance with the Development Agreement or complete the Replacement Facilities by the Completion Date or if the Development Agreement is terminated pursuant to the express termination rights set forth therein, then the City shall notify Lessee in writing and Lessee shall construct the Alternate Replacement Facilities in accordance with this Lease ("**Notice to Proceed with ARF**").

(ii) If the Notice to Proceed with ARF is given and the "Vesting Date" (as defined in the Development Agreement) has not occurred, the City and Lessee shall amend this Lease in accordance with Section 2.1(a) above. If the Notice to Proceed with ARF is given after the Vesting Date and Residential Developer continues to own the Residential Parcel then the ARF Easements shall be provided for via either the Alternate Easement Agreement or the Reciprocal Easement Agreement, as applicable, and such applicable agreement will be recorded prior to the Vesting Date.

(iii) Within ninety (90) days after receipt of written notice from the City in accordance with clause (i) above, Lessee shall submit a proposed ARF Concept Plan to the City for the City Commission's review and Approval in the City Commission's sole and absolute discretion. The City Manager shall notify Lessee, in writing, of any comments of the City to such proposed ARF Concept Plan, and Lessee shall revise the ARF Concept

Plan in accordance with the City's comments. Within ninety (90) days after the City Commission's Approval in its sole and absolute discretion of the ARF Concept Plan, Lessee shall prepare and submit to the City Manager for its Approval, plans and specifications consistent with the Approved ARF Concept Plan and including the Mandatory Project Components and sufficient for submitting an application for approval to all applicable Governmental Authorities having jurisdiction over the development of the Leased Property, including the Design Review Board and Planning Board. If such plans and specifications are consistent with the Approved ARF Concept Plan and include the Mandatory Project Components, the City Manager shall Approve same within twenty-one (21) days after receipt. If such plans and specifications are not consistent with the Approved ARF Concept Plan and/or do not include the Mandatory Project Components, then within thirty (30) days after receiving the City's disapproval notice, Lessee shall revise same until they are consistent with the Approved ARF Concept Plan and include the Mandatory Project Components and submit the same to the City for the City's review and Approval as provided in this Section 8.2(c)(iii), provided that the time period for approval or disapproval shall be fifteen (15) days. Any dispute as to whether such plans and specifications are consistent with the Approved ARF Concept Plan and/or include the Mandatory Project Components shall be treated as a Development Dispute in accordance with Section 20.14 hereof. Within fifteen (15) days after receipt of the City Manager's Approval of such plans and specifications, Lessee shall submit same to all applicable Governmental Authorities having jurisdiction over the development of the Leased Property, including the Design Review Board and Planning Board and thereafter shall pursue all such approvals diligently and in good faith.

(iv) Within one hundred eighty (180) days after the issuance of final, non-appealable approval from all applicable Governmental Authorities of the Approved plans and specifications for the Alternate Replacement Facilities in accordance with clause (iii) above, Lessee will prepare and submit to the City Manager for its Approval the construction drawings, which shall be consistent with the Approved ARF Concept Plan, as may be modified by the applicable Governmental Authorities, and shall include the Mandatory Project Components. If the construction drawings are consistent with the Approved ARF Concept Plan, as may be modified by the applicable Governmental Authorities, and include the Mandatory Project Components, the City Manager shall Approve same within twenty-one (21) days after receipt. If the construction drawings are not consistent with the Approved ARF Concept Plan, as may be modified by the applicable Governmental Authorities, and/or do not include the Mandatory Project Components, then within thirty (30) days after receiving the City's disapproval notice, Lessee shall revise same until they are consistent with the Approved ARF Concept Plan, as may be modified by the applicable Governmental Authorities, and include the Mandatory Project Components and submit the same to the City for the City's review and Approval as provided in this Section 8.2(c)(iv), provided that the time period for approval or disapproval shall be fifteen (15) days. Any dispute as to whether the construction drawings are consistent with the Approved ARF Concept Plan, as may be modified by the applicable Governmental Authorities, and/or include the Mandatory Project Components shall be treated as a Development Dispute in accordance with Section 20.14 hereof. The construction drawings Approved by the City Manager shall be the Approved plans and specifications for the Alternate Replacement Facilities for purposes hereof, and within

fifteen (15) days after City Manager's Approval of such plans and specifications, Lessee shall submit its building permit application for the Alternate Replacement Facilities.

(v) Lessee shall provide the City with a schedule of performance for the Work prior to the commencement of any construction of such component. Within two (2) years after the City's delivery of the Notice to Proceed with ARF to Lessee, Lessee shall submit an application for the building permit for construction of the Alternate Replacement Facilities. Within three (3) years after Lessee's submission of its application for the building permit for construction of the Alternate Replacement Facilities, Lessee shall Complete Construction of the Alternate Replacement Facilities, subject to City Delays and Unavoidable Delays in accordance herewith, if applicable (the "**ARF Completion Deadline**"). In the event that Lessee is unable to Complete Construction of the Alternate Replacement Facilities by the ARF Completion Deadline then such failure shall not be an Event of Default hereunder provided that Lessee (x) is diligently pursuing prosecution of the work in good faith, (y) pays to the City liquidated damages of \$1,000 per calendar day from the ARF Completion Deadline through the actual date on which Lessee Completes Construction of the Alternate Replacement Facilities, as compensation to the City for delayed Completion of Construction of the Alternate Replacement Facilities and not as a penalty (the "**ARF Completion Liquidated Damages**") and (z) Completes Construction of the Alternate Replacement Facilities not later than six (6) years and six (6) months after the City's delivery of the Notice to Proceed, subject to City Delays and Unavoidable Delays in accordance with this Agreement, if applicable ("**Outside ARF Completion Date**"). In the event Lessee fails to Complete Construction of the Alternate Replacement Facilities on or before the Outside ARF Completion Date, such failure shall be an Event of Default hereunder. All ARF Completion Liquidated Damages shall be paid on or before, and as a condition to the issuance of, any Certificate of Occupancy for the Alternate Replacement Facilities or any portion thereof thereof. The Parties hereby agree and acknowledge that the liquidated damages described in this **Section 8.2(b)(v)** are not a penalty and are reasonable in the light of the anticipated or actual losses to be incurred by the City due to Lessee's failure to meet the milestones provided herein. In the event a court of competent jurisdiction determines that any liquidated damages herein are unenforceable, notwithstanding Lessee's agreement herein that such amounts are fair and reasonable, Lessee shall not be relieved of its obligations to the City for the actual damages resulting from Lessee's failure to meet the milestones provided herein.

(vi) Lessee shall prosecute completion of the Work substantially in accordance with plans and specifications Approved by the City Manager, with all commercially reasonable diligence and in good faith, in good and workmanlike manner, and shall use diligent good faith efforts to prosecute the completion of such component in accordance with the schedule of performance Approved by City Manager, subject to delays for (A) Unavoidable Delay in accordance with this Lease and/or (B) City Delays, if applicable.

(c) The City shall have the right to Approve, in its sole discretion any Prohibited Changes.



(d) Notwithstanding any Approval provided pursuant to this Section 8.2, Lessee shall be solely responsible, at Lessee's cost, with City's reasonable cooperation as may be required, for obtaining all required final, non-appealable Governmental Approvals for the Marina Improvements and 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 the Submerged Land Lease and all applicable Governmental Approvals and Governmental Requirements.

(e) Lessee shall keep the City apprised of Lessee's progress towards the Alternate Replacement Facilities and Marina Improvements, as applicable.

**Section 8.3 Quality of Construction.** The quality of construction and development of the Marina Improvements shall be consistent with the Marina Standard, using only first-class materials and performed in a good and workmanlike manner.

The quality of construction and development of the Alternate Replacement Facilities and those portions of the Marina Improvements constructed within Area 1 shall be consistent with the Area 1 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 Marina 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) If, after the City's Approval of the plans and specifications for the Alternate Replacement Facilities, Lessee desires to make any material changes in, or material addition to, such Approved plans and specifications, Lessee shall submit to the City Manager, prior to commencement of construction of the Alternate Replacement Facilities such proposed modifications for the City Manager's Approval to the extent such modifications include any Prohibited Changes.

**Section 8.5 Intentionally Deleted.**

**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 20.14 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 required to be constructed by Lessee of whatever nature and description on the Leased Property together with all the furnishings, facilities and equipment necessary for the operation of Area 2 to be consistent with the Marina Standard, and after the completion of the Replacements Facilities or the Alternate Replacement Facilities, the operation of Area 1 to be consistent with the Area 1 Standard and, in each case, in accordance with the plans and specifications Approved by the City.

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

(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 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 and Payment Bond.** Lessee shall not commence construction of Marina Improvements and, as applicable, the Alternate Replacement Facilities, or any other construction on the Leased Property performed 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 but only to the extent but only to the extent that such construction work exceeds the monetary threshold as provided in Fla. Stat. 255.05 (currently \$200,000), as may be amended from time to time. The City Manager has the authority to waive the requirement of the Performance Bond and Payment Bond upon the written request of Lessee to City. In lieu of the Performance and Payment Bond required by this section, Lessee or its contractor may file with City an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit, and any such alternative form of security shall be for the same

purpose and be subject to the same conditions as those applicable to the Payment and Performance Bond. The determination of the value of an alternative form of security shall be made by the City. Prior to commencement of construction of the Alternate Replacement Facilities, 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 following the termination of this Lease by the City as the result of an Event of Default.

**Section 8.10 Approval of General Contractor.** Lessee's selection of the general contractor for the construction of the Alternate Replacement Facilities shall be subject to the advance Approval of the City Manager, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed general contractor to perform the contract, based on the contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the general contractor proposed by Lessee does not have a significant history of material non-compliance with the law, City agrees to Approve any general contractor proposed by Developer that satisfies each of the following:

- (a) Has a State of Florida Building and Business License;
- (b) Has completed at least one retail project in the past ten years; and
- (c) Has total bonding capacity sufficient to bond the Alternate Replacement Facilities

**Section 8.11 Construction Agreement Required Clauses.** All Construction Agreements shall include the provisions set forth on Exhibit "L" (or language substantially similar thereto which is Approved in advance by the City Manager); provided all references to "Contractor" on Exhibit "L" shall refer to any contractor party to a Construction Agreement

**Section 8.12 Delivery of Plans.** Promptly after completing the Work and Lessee's receipt of a Certificate of Occupancy for the Work, Lessee shall deliver to the City a copy of the plans and specifications, including shop drawings, for the Alternate Replacement Facilities.

**Section 8.13 City and Lessee to Join in Certain Actions.** 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 Marina 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 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.

**Section 8.14 Construction Obligations.** Prior to Completion of Construction of the Alternate Replacement Facilities, Lessee shall, or shall cause its general contractor to: Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;

(b) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;

(c) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work;

(d) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;

(e) Maintain the Leased Property in a clean and orderly manner at all times, and remove all paper, cartons and other debris from the Leased Property;

(f) Protect all Work prior to its completion and acceptance;

(g) Restore and repair any properties adjacent and leading to the Leased Property damaged as a result of construction of the Alternate Replacement Facilities, whether such properties are publicly or privately owned;

(h) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Leased Property and the Work, and provide a copy of same to the City;

(i) Upon the issuance of a Certificate of Occupancy for the Alternate Replacement Facilities or the Park, as applicable, shall deliver a copy thereof to the City; provided, however, Lessee acknowledges and agrees that in no event shall any Certificate of Occupancy be issued for the Alternate Replacement Facilities, the Park or any portion thereof prior to the payment in full in cash to the City of any and all ARF Completion Liquidated Damages;

(j) Promptly after Completion of Construction of the Alternate Replacement Facilities, deliver to the City as built drawings and plans and specifications of the Alternate Replacement Facilities;

(k) Upon Completion of Construction of the Alternate Replacement Facilities, deliver to the City a certification of the architect (certified to the City on the standard AIA certification form), that it has examined the Approved plans and specifications and that, in its professional judgment, after diligent inquiry, Construction of the Alternate Replacement Facilities has been substantially Completed in accordance with the Approved plans and specifications, and as constructed, the Alternate Replacement Facilities comply with all applicable Governmental Requirements;

(l) Upon Completion of Construction, ensure that the Alternate Replacement Facilities and Park are free of all liens and encumbrances for all work performed or materials supplied in connection with construction of the Alternate Replacement Facilities and Park;

(m) Upon Completion of Construction, deliver to the City a final accounting of all costs for design, construction, permitting and fees for the Alternate Replacement Facilities expended by Lessee;

(n) Notwithstanding any provision hereof to the contrary at no time during construction of the Alternate Replacement Facilities may Lessee make any Prohibited Changes without the express, prior written Approval of City (which Approval may be granted or withheld by City in City's sole and absolute discretion in accordance with Section 8.2(c));

(o) Developer shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent, good-faith efforts to complete the same in accordance with this Lease. Lessee shall not, except if an emergency exists (then only to the extent that the City can grant such an exception), carry on any construction, maintenance or repair activity in any easement area, including the Baywalk easement area, that interferes in any material manner with the safety, use or enjoyment of the property encumbered by such easement, but subject to clause (p) below; and

## **Article IX SECURITY DEPOSIT**

Lessee has deposited with the City the sum of Two Hundred Fifteen Thousand Five Hundred Forty-Eight Dollars and 76/100 (\$215,548.76) (the "**Security Deposit**"). The Security Deposit shall be held by City, without any liability for interest thereon, 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. The City shall be entitled to commingle the Security Deposit with the City's other funds.

If at any time after the occurrence and during the continuance of an Event of Default, then the City, at its option and upon the giving of notice as required by Article XX hereof, 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, 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, such subsequent owner, other than another governmental agency, shall place the Security Deposit in escrow and such subsequent owner shall assume the City's obligations hereunder, including with respect to the Security Deposit.

**Article X**  
**ENCUMBRANCE OR ASSIGNMENT OF LEASEHOLD**

**Section 10.1 Conditions of Financing.**

(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 provided, however, in the case of Mezzanine Loans only, Lessee shall have the right to qualify a master credit facility at the parent owner level so long as the Mezzanine Lender is an Institutional Lender and the financial covenants under the master credit facility are tested at the parent owner level and not on any Affiliate with no direct ownership in Lessee;

(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, and in the case of a First Subleasehold Mortgage extend to or be a lien or encumbrance upon Lessee's interest in the Lease or Lessee's interest in the Master Sublease or in any right appurtenant to those interests;

(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 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) the rights of Lessee arising out of this Lease shall not be affected by the First Leasehold Mortgage, First Subleasehold Mortgagee, Mezzanine Loan or Mezzanine Lender with respect to the Sublessee, nor shall the Lessee be deprived in any other way of its rights in this Lease, except to the extent provided in this Article X or in any subordination, non-disturbance and recognition agreement between the Lessee and any Protected Lender that is consistent with the terms of this Lease.

(vi) 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;

(vii) 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, solely with respect to a First Leasehold Mortgagee (or its designee or nominee taking title) or a First Subleasehold Mortgagee (or its designee or nominee taking title) 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; and

(viii) Master Sublessee shall not secure any financing or enter into any First Leasehold Mortgage in favor of a First Subleasehold Mortgagee prior to Developer's satisfaction of all Construction Commencement Conditions (as defined in the Development Agreement).

(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) Lessee shall deliver, or cause Master Sublessee to deliver, 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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 XX 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 XX 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 **Error! Reference source not found.** 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**

**Section 11.1 Transfers.** Except as set forth in Section 11.2(a) and (b) 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 Leased Property, nor to permit the occupancy of any part thereof by any other Person, nor to permit transfer of this Lease or possession of the Leased Property by merger, consolidation, or dissolution, nor to transfer or permit the transfer, in one or a series of transactions, of a direct or indirect legal or beneficial interest Controlling in Lessee (each, a “**Transfer**”), without the Approval of the City Manager, first had and obtained in each instance. For avoidance of doubt, the parties agree that transfers of ownership interests exceeding fifty percent (50%) of the outstanding ownership interests in Lessee in total shall not be deemed Controlling and/or a Transfer requiring consent by the City in any manner unless a single transferee or a group of transferees that are Affiliates Controls fifty percent (50%) or more of the Lessee following the Transfer; provided, however, that before and after giving effect to such Transfers, Suntex Marina Investors, LLC shall control the day to day operations of Lessee. 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 Leased Property and no permission to any person to occupy the whole or any part of the Leased Property 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 5% of 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 or commercial tenants of the Replacement Facilities or Alternate Replacement Facilities) for a period not to exceed three (3) years without first having had and obtained in each instance the Approval of the City Manager. Any Transfer that violates this Lease shall be null and void and of no force and effect.

### **Section 11.2 Master Sublease and Space Leases.**

(a) Lessee shall have the right to enter into the Master Sublease in the form Approved by the City Manager as of the date hereof, with Marina Park Commercial, LLC, a Delaware limited liability company. Lessee shall not materially amend, modify, supplement or restate, or permit any amendment, modification, supplementation or restatement of the Master Sublease affecting Lessee’s and Master Sublessee’s rights and obligations as set forth herein or in the Recognition Agreement without the Approval of the City Manager in its sole and absolute discretion.

(b) Subject to any applicable terms expressly set forth in this Section 11.2, Lessee shall have the right to enter into Space Leases of portions of the Leased Property at any time and from time to time during the Term with such Space Lessees, and upon such commercially

reasonable 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 Lease (including this Article XI and the Area 1 Standard and Marina Standard). At the City's request, Lessee shall allow the City to review and inspect the Master Sublease and any and all Space Leases for the Leased Property. Lessee shall make good faith and diligent efforts to enter into Space Leases of the Replacement Facilities or Alternate Replacement Facilities such that within a reasonable time following the Completion of Construction of the Residential Project or Alternate Replacement Facilities, the Marina Project has operating Space Leases. In the event that within one year after Completion of Construction of the Residential Project or the Alternate Replacement Facilities, as applicable, material progress has not been made in leasing such Space Leases, Lessee shall not be in default under this Lease, but City may request that Lessee change its leasing broker and the replacement broker shall be subject to the Approval of the City Manager.

(c) Lessee 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, it will use diligent, good faith efforts to enforce or cause to be enforced the performance and observance in all material respects of all terms, covenants, conditions and agreements required to be performed and observed by Master Sublessee under the Master Sublease and by each Space Lessee under the Space Lease. Lessee agrees that:

(i) the Master Sublease shall 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) the Master Sublease shall 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) to the extent that any rent for any Space Lease is based on a percentage of gross receipts received by the Space Lessee thereunder, such Space Lease shall require the Space Lessee thereunder to maintain adequate books and records including reasonably detailed information on gross receipts applicable to the premises demised under such Space Lease 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, provided that City will address any confidentiality concerns of Space Lessee by agreeing to inspect but not copy such books and records;

(iv) the Space Leases shall 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

(v) the Master Sublessee and Space Leases shall 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 Section 11.2).

(d) City and Lessee shall, and Lessee shall cause Master Sublessee to, enter into the Recognition Agreement on or prior to the Commencement Date. The Master Sublease may include lender protection provisions conforming to the provisions of this Lease, and subject to such conformity, all such provisions shall be recognized by City in accordance with the Recognition Agreement.

(i) Lessee may request that the City enter into non-disturbance agreements with those Space Lessees and Space Leases that the City has Approved.

**Section 11.3 Acceptable Owner & Permitted Transfers.** Notwithstanding anything to the contrary set forth herein, any of the following proposed transferees (each, a “Proposed Major Transferee”) shall satisfy the Acceptable Owner Criteria set forth on Exhibit “A” attached hereto prior to the effectiveness of any Transfer to such Proposed Major Transferee: any transferee of the entire Leased Property, the entire Replacement Facilities or the entire Alternate Replacement Facilities, as applicable, or the entire Area 2, in each case, whether by assignment, by operation of law, or by merger, consolidation, or dissolution; and any transferee, in one or a series of transactions, of a direct or indirect Controlling legal or beneficial interest in Lessee. Additionally, and for avoidance of doubt, the following Transfers shall be permitted without the consent of the City in any manner (each, a “Permitted Transfer”):

(a) The “going public” by Lessee or any owner of Lessee, including, but not limited to, the filing of a registration statement with the Securities and Exchange Commission and/or the creation of one or more classes of stock and the offering of shares of stock to the public for purchase.

(b) The conversion by Lessee to a Delaware series LLC structure or the entering into of intercompany arrangements necessary for REIT compliance purposes including taxable REIT subsidiary leases in accordance with Section 856 of the Internal Revenue Code.

## **Article XII USE OF PREMISES**

**Section 12.1 Use.** 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 in accordance with the terms of this Lease, 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: ten percent (10%) of all slips; provided, however, if there is not a wait list for a particular slip at the time of rental and such rental is to a Space Lessee who intends to engage in the sale of boats and motors, then such slip may be used for the sale of boats and motors, even if such slip causes Lessee to exceed the 10% limitation hereunder, provided that the aggregate of all slips used for the sale of boats and motors shall not exceed 20% of all slips. 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. Notwithstanding anything herein to the contrary, nothing contained herein shall be deemed to modify or waive any obligations under the Submerged Land Lease.

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. Restaurant, retail and office uses.

The Leased Property shall be used for no other use or purpose whatsoever unless Approved by the City Manager. **Public Use.** The Lessee covenants that all facilities located on the Leased Property shall be made available to the general public, subject only to the rights of the Master Sublessee and Space Lessees with respect to any private office space, 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 and the right to enforce safety and security regulations) 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.

**Section 12.3 Term of Subleases/Space Leases** The Lessee covenants and agrees that it will not, and will not permit Master Sublessee to, 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. The Lessee further covenants that the Master Sublessee will not have a term beyond the stated expiration date of this Lease.

**Section 12.4 Municipal Slips.** 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 in consultation with the City, 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.

**Section 12.5 Mooring Field.** 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.

**Section 12.6 Space Leases.** All Space Lessees of retail space within the Leased Property shall be of a quality and nature consistent with the then existing types of businesses located in the South of Fifth neighborhood and of a type consistent with first class retail space provided that the Space Lessees will represent a mix of tenants offering casual to high-end retail and restaurant experiences and the Master Sublease shall require such Master Sublessee and Space Lessee to refrain from engaging in any Prohibited Use. 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 Prohibited Use or in violation of any insurance requirements or Governmental Requirements covering or affecting the use of the Leased Property, or any part thereof, and will not suffer any act to be done or any condition to exist on the Leased Property, or any part thereof, or any article to be brought thereon, which may make void or voidable any insurance obtained by Lessee then in force with respect thereto.

### **Article XIII NO REPRESENTATIONS BY CITY**

Lessee acknowledges that Existing Marina Lessee is an Affiliate of Lessee and Lessee has examined the Leased Property and knows the condition thereof and accepts the Leased Property in its present "AS IS" and "WHERE IS" condition "WITH ALL FAULTS" and latent or patent defects, and without any representations or warranties of any kind or nature whatsoever, express or implied, or arising by operation of law by City (except those expressly made by the City in Sections 2.1, 2.2., 2.4. 10.2 and 23.1 of this Lease) as to its condition or as to the use or occupancy which may be made thereof. The Lessee assumes, in accordance with the 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 services or make any repairs or structural changes, additions or alterations thereto.

The provisions of this Article XIII shall survive the expiration or earlier termination of this Lease.

**Article XIV**  
**CITY NOT LIABLE FOR FAILURE OF WATER SUPPLY, ETC.**

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**  
**REPAIR AND ALTERATIONS**

**Section 15.1 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, Baywalk, curbs, landscaping, parking areas, including Parking Garages, 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 otherwise in accordance with the Marina Standard with respect to Area 2, and the Area 1 Standard with respect to Area 1, and keep all parking areas, well lighted, all in accordance with applicable municipal ordinances, other Governmental Requirements, 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, 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 Lessee Improvements, as applicable, to operate in Area 2 throughout the Term in accordance with the Marina Standard and to operate in Area 1 throughout the Term in accordance with the Area 1 Standard. All such repairs, replacements, renewals and additions shall be in quality and class equal to or better than the original Marina Improvements, Replacement Facilities or Alternate Replacement Facilities, as applicable, to preserve the Leased Property and the Marina in good condition and working order and shall be constructed and installed in compliance with this Lease, all Governmental Requirements and all requirements 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, except as set forth in Section 8.1(f) above, Lessee shall not obstruct the Baywalk, streets or sidewalks or alleys in or adjoining the Leased Property except as may be permitted by City or as set forth in this Lease. Notwithstanding anything to the contrary in this Lease, during construction of the Replacement Facilities and/or the Alternate Replacement Facilities, the standards for maintenance of Area 1 shall be as set forth in Article X

of the Development Agreement until the Completion of Construction for the Replacement Facilities or the Alternate Replacement Facilities.

**Section 15.2 Parking.** Without limiting the generality of Section 15.1, 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 and in the Parking Standards set forth on “Exhibit K” and (ii) from and after the issuance of a Certificate of Occupancy for the Replacement Facilities or Alternate Replacement Facilities, as applicable, the Replacement Parking Facility, in accordance with the Parking Standards set forth on “Exhibit K”. In the event of a conflict between the Parking Management Agreement and the Parking Standards, the Parking Standards shall govern.

**Section 15.3 Baywalk.** Lessee shall maintain the Baywalk or cause the Baywalk to be maintained in accordance with the applicable Area 1 Standard. In no event shall Lessee be required to enforce any rule, regulation or laws surrounding the use of the Baywalk

**Section 15.4 Park.** Once the Park is completed (which in connection with Replacement Facilities shall be Completion of Construction for the Project and for the Alternate Replacement Facilities shall be the Completion of Construction for the Alternate Replacement Facilities), the City and Lessee shall enter into an amendment of this Lease to remove the land comprising the Park from the Leased Property, and thereafter, the City shall dedicate the Park as a public park for the use of the public. After the Lease is so amended, the City and the description of the Leased Property is amended to reflect the same, the City shall be responsible for the maintenance and security of the Park according to applicable Area 1 Standards relating to the Park. In the event that the City does not comply with the Area 1 Standards relating to the Park or there are violations relating to the programming of the Park as set forth below then Lessee may, but shall not be required, to cause compliance with such maintenance and security standards, and such efforts shall be at the sole cost of City. City will not permit improvements, including, but not limited to, any outfalls, pumps or associated structures or facilities on or under the Park that would create discharge by outfall that would adversely impact the operation of the Leased Property.

(a) Lessee shall be permitted to hold up to twelve (12) corporate and other special events (each, a “**Special Event**”) at the Park per year, which shall be pre-approved by the City, including approval for cooking/food service and alcoholic beverage service, to the extent permitted by the City Code and subject to the Lessee’s submission of the same supporting documentation required by Section 15.4(c) below for the uses set forth therein. City agrees to waive its special event permit fees and user fees for up to twelve (12) Special Events each year.

(b) Lessee shall annually obtain a master special events permit satisfying the requirements of the City’s Special Event Guidelines (as may be amended from time to time), to cover each of its Special Events to be held within the Park. Except with respect to the Special Events set forth below in subsections (i) through (vi), which events require additional City approval in accordance with this Section, Lessee shall provide the City’s Tourism & Culture Department with at least thirty (30) days prior written notice of its election to hold such Special Event, along with the pertinent details relating to each proposed event, such as number of participants, proposed uses, and times. Except for events which include any of the elements set forth in sections (i) through (vi) below, no additional approval by the City’s Tourism and Culture

Department shall be required for such Special Event to be held pursuant to the Master Special Events Permit.

(c) Any proposed Special Event which contemplates (i) amplified sound, (ii) temporary installation of structures requiring permits from agencies having jurisdiction, (iii) hours of operation which extend beyond the hours of operation for the Park (as may be established by the City Manager in accordance with the City Code), or (iv) dates for the proposed Special Event that conflict with those high impact periods in which the City does not issue special event permits (i.e., Spring Break) shall require the approval of the City Manager or his or her designee. With respect to any such Special Events which include any of the elements set forth in subsection (i) through (iv) above, Lessee shall submit to the office of Tourism & Culture Department its request for approval of the proposed Special Event, along with all supporting documentation required by the City's Special Event Guidelines with respect to the activation of the proposed element (i.e., cooking/food service), at least thirty (30) days prior to the date of the proposed Special Event.

(d) The City and Lessee shall mutually agree on reasonable restrictions on the use of the Park consistent with the use of the Park as a passive park and to include restrictions on events that are in competition with tenants under Space Leases. The City shall refrain from permitting events at the Park with expected patrons of over 150 people without first obtaining the Approval of Lessee.

**Section 15.5 Failure to Maintain.** Should Lessee fail to maintain all or any portion of the Leased Property or the Parking Garages in accordance with this Article XV, then Lessee shall not be in default hereunder but the City shall have the right to levy fines in accordance with the terms and conditions of the Area 1 Standard, Parking Standard and the Marina Standard, including any notice and cure periods. Any and all such fines shall constitute "Rent" hereunder. Should City fail to maintain all or any portion of the Park in accordance with this Article XV and the standards set forth in the Area 1 Standard, then after written notice to the City and opportunity for the City to cure within two (2) days following receipt of written notice, Lessee shall have the right to perform the obligations required of City at, City's sole cost and expense, including the cost of any personnel or equipment needed to perform such obligations.

**Section 15.6 Alterations.** Lessee shall not, without prior written Approval of City, make or permit to be made any material alterations, improvements, or additions to the improvements and facilities on the Leased Property except in conjunction with Replacement Facilities or Alternate Replacement Facilities, as applicable, and the Marina Improvements, in each case, in accordance herewith; 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. 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 and required to demolish the existing improvements (including any portion of the Replacement Facilities then existing to the extent not utilized for the Replacement Facilities) within Area 1 in conjunction with the development and construction of the Alternate Replacement Facilities in accordance herewith.

All work done by Lessee or its contractors pursuant to this subparagraph shall be done in a first-class workmanlike manner in accordance with the Area 1 Standard or the Marina Standard, as applicable, using only first-class 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 XVI OPERATION**

### **Section 16.1 Operation of Marina.**

(a) Lessee shall deliver an Operating Plan to the City for its review (and not Approval) within ninety (90) days after the Commencement Date, and thereafter, upon reasonable request by the City. Subject to Section 16.1(b) below, 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) with respect to Area 2, carry and cause to be carried a reasonably complete stock of merchandise and shall maintain reasonably adequate personnel for efficiently accommodating its customers; (iii) keep the Leased Property constantly open for business; (iv) operate Area 2 in accordance with the Marina Standard; and (v) operate Area 1 in accordance with the Area 1 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 re-tenant any expired or terminated Space Lease, make repairs, alterations, remodeling and improvements, including for any construction in connection with Replacement Facilities, Alternate Replacement Facilities or Marina Improvements, reconstruction after casualty or condemnation or any Force Majeure Event in accordance with this Lease; 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.

**Section 16.2 Operator of Marina.** 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 any affiliate of Suntex Marina Investors, LLC (“SMI”) or a subsidiary or affiliate Controlled by SMI as manager. The City shall have the right to reasonably Approve any proposed successor manager not Controlled by SMI.

## **Article XVII LESSEE TO COMPLY WITH LAWS**

**Section 17.1 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 XIX 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 Governmental Requirement be of a kind not now within the contemplation of the Parties.

**Section 17.2 Contest.** Provided non-compliance therewith shall not constitute a crime or an offense punishable by fine or imprisonment of the City, its officers and agents, 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 during such contest shall not be deemed a breach of this Lease, provided such contest diligently prosecuted. 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.

## **Article XVIII INSPECTION BY CITY**

**Section 18.1 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 and Article XX 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 XVIII 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 XIX INSURANCE AND RECONSTRUCTION**

**Section 19.1 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 the Alternate Replacement Facilities, as applicable, and Marina Improvements, and the Master Sublessee and all Space Lessees, 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 must be equivalent to the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). 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) the Alternate Replacement Facilities, as applicable, and Marina Improvements, the Master Sublessee and the Space Lessees shall be solely responsible for all deductibles contained in their respective policies. All policies procured pursuant to this Article XIX shall be subject to maximum deductibles reasonably acceptable to the City. The City of 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 19.2 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 19.11 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, 3<sup>rd</sup> Floor.

**Section 19.3 Required Coverages.** 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:

(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 equivalent to the latest edition of the Business Automobile Liability policy, as filed by the Insurance Services Office (ISO).

(c) Sudden & Accidental 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. Such insurance may be provided through a combination of primary and excess/umbrella liability policies.

(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 80% of the insurable value of all improvements located on the Leased Property under an “all risk” form, including damage by water, flood, tornado, hurricane and earthquake in an amount not less than the replacement cost value of the Lessee Improvements.

(f) 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.

(g) Professional Liability. Lessee shall cause any architects or engineers or other professionals performing services on the Leased Property to maintain 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.

(h) Hull and Protection Indemnity Insurance covering any boats owned by Lessee each with minimum Protection and Indemnity limits of \$1,000,000 per occurrence.

(i) Liquor Liability Insurance on an occurrence basis, including property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence.

**Section 19.4 Premiums and renewals.** Lessee shall pay as the same become due all premiums for the insurance required by this Article XIX, 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 19.5 Adequacy Of Insurance Coverage.**

(a) The adequacy of the insurance coverage required by this Article XIX 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 19.6 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 19.7 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 19.8 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 19.9 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 \$5,000,000 (as adjusted for inflation over the Term pursuant to Section 30.20 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 19.9(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 20.2(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 \$5,000,000 (as adjusted for inflation over the Term pursuant to Section 30.20 hereof) or is less than \$5,000,000 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 19.9.

(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 19.10 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 15.3 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 or the City may terminate this Lease by delivery of written notice of such termination to the other Party 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 neither the City nor Lessee timely elect to terminate this Lease in accordance with this Section 19.10(b), Lessee shall restore the Lessee Improvements in accordance with Section 19.10(a) hereof.

**Section 19.11 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 19.12 Inadequacy of Insurance Proceeds.** Lessee shall use diligent, good faith efforts to satisfy all conditions of the First Mortgage to permit release and disbursement of such proceeds towards the costs of restoration of the Project. Notwithstanding anything to the contrary set forth in this Lease, 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 19.13 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 19.14 Compliance.** Lessee's compliance with the requirements of this Article XIX 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 19.15 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 19.16 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 XX REMEDIES; EVENTS OF DEFAULT**

**Section 20.1 Default by Lessee.** 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 20.2:

(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 written notice thereof from the City to Lessee (or as otherwise expressly set forth in this Lease with respect to fines) or pursuant to express specified times for payment, 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 20.1(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 written 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 Lessee is diligently pursuing correction thereof;

(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 20.1(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 20.1(b) above would result in such jeopardy) and such default shall continue after written 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 Lessee is diligently pursuing correction thereof;

(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 any of the foregoing of the trustee, receiver 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;

(f) in the event of a failure to comply with any of Lessee's indemnification obligations under this Agreement and such failure is not cured within 30 days after written notice thereof by the City to Lessee specifying such failure, unless such failure cannot be cured by the

payment of money and requires additional action to be performed by Lessee which cannot by its nature reasonably be performed within such initial 30 day period, in which case no Event of Default will be deemed to exist as long as Lessee (i) commences curing the same within the initial 30 day period, (ii) advises the City of the steps being taken by Lessee to remedy such failure (which steps shall be reasonably designed to effectuate the cure of such failure in a professional manner) and thereafter, upon the City's request, updates the City as to the status of such cure, and (iii) diligently prosecutes such cure to completion in good faith within a reasonable period and, with respect to Lessee's indemnification obligations for any Marina Lawsuit, such reasonable period shall not exceed an additional 90 days, provided that, if Lessee fails to remedy such failure with respect to any Marina Lawsuit within an additional 30 days, the City, may at its option and discretion, and at Lessee's cost and expense, take those reasonable actions it reasonably is able to take to address those circumstances that caused Lessee's default under this clause;

(g) Lessee's failure to Complete Construction of the Alternate Replacement Facilities on or before the Outside ARF Completion Date.

## **Section 20.2 Remedies for Lessee's Default.**

(a) After the occurrence and 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 XXIV.

(d) Upon the termination of this Lease, as provided in this Section 19.3(c), 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 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 20.3 Right of Re-Entry.** The City, upon or at any time after any expiration or termination, may without further notice, enter upon and re-enter the Leased Property and possess and repossess itself thereof, by self-help in any manner (so long as such actions by the City do not constitute or result in a breach of the peace), summary proceedings, ejectment or otherwise, and may dispossess Lessee and remove Lessee and Master Sublessee and all Space Lessees (subject to the terms of any non-disturbance agreements with Master Sublessee or any Space Lessee) and all other persons and property from the Leased Property and the right to receive all rental income of and from the same. No re-entry by the City shall be deemed an acceptance of surrender of this Lease or shall absolve or discharge Lessee from any liability under this Lease.

**Section 20.4 Right to Relet.** At any time and from time to time during the continuance of any Event of Default, the City may relet the Leased Property, or any part thereof, in the name of the City or otherwise, for such term or terms (which may be greater or lesser than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions of free rent) as the City, in its reasonable discretion, may determine and may collect and receive the rents therefor. However, except as set forth below in 20.5, in no event shall the City be under any obligation to relet the Leased Property, or any part thereof, and the City shall in no way be responsible or liable for any failure to relet the Leased Property, or any part thereof, or for any failure to collect any rent due upon such reletting; provided, however, after an Event of Default but before any such reletting by the City and before such expiration or termination, Lessee may request in writing that the City consent to an assignment of this Lease to another qualified lessee, which consent shall not be unreasonably withheld.

**Section 20.5 Lessee’s Continuing Obligations.** No expiration or termination of this Lease shall relieve Lessee of its liability and obligations under this Lease and such liability and obligations shall survive any such expiration or termination. Notwithstanding the foregoing, in the event of any termination pursuant to this Section 20.5, Lessee shall pay to the City the lesser of (i) the Base Rent required to be paid by Lessee through the natural expiration of the Term, if less than three (3) years or (ii) Base Rent for a period of 3 years at the rate of the greater of Minimum Annual Guaranteed Rent in place at the time of the default or the prior year’s actual Base Rent, which amount shall serve as liquidated damages for Lessee’s default. The Parties hereby agree and

acknowledge that the liquidated damages described in this Section 20.5 are not a penalty and are reasonable in the light of the anticipated or actual losses to be incurred by the City as a result of an Event of Default by Lessee hereunder. In the event a court of competent jurisdiction determines that any liquidated damages herein are unenforceable, notwithstanding Lessee's agreement herein that such amounts are fair and reasonable, Lessee shall not be relieved of its obligations to the City for the actual damages resulting from Lessee's for an Event of Default hereunder.

**Section 20.6 Lessee Responsible for Space Lessees.** Any violation of any covenant or provision of this lease, whether by act or omission, by Master Sublessee (solely in its capacity as Master Sublessee) or any Space Lessee, or their representatives, successors or assigns, or any other persons occupying space in the Leased Property, shall be deemed a violation of such provision by Lessee and a default under this Lease. Any such violation shall not be deemed a default if Lessee cures in accordance with the provisions of Section 20.1 hereof.

**Section 20.7 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 20.8 Force Majeure.** In connection with all matters hereunder other than construction of the Alternate Replacement Facilities (to which Unavoidable Delays may apply), 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 30.5 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 30.5 hereof.

**Section 20.9 Remedies Cumulative; Waiver.** Subject to the provisions of Section 20.5 with respect to liquidated damages and unless another right or remedy is specifically made the sole right or remedy of said party, 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 20.10 Remedies Preserved.** In the event of any breach of threatened breach by either party of any of the terms, covenants or agreements contained in this Lease, either party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed by law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease, unless another right or remedy is specifically made the sole right of said party

**Section 20.11 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 20.11 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 20.11 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, and sums expended in connection with the Marina 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 20.12 Intentionally Deleted.**

### **Section 20.13 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 20.14, or (ii) Disputes relating to City’s disapproval of a Proposed Major Transferee as an Acceptable Owner, or the City’s determination of any amended Marina Standard, which shall be resolved in accordance with Section 20.15, or (iii) Disputes relating to Lessee’s diligent pursuit of Marina Lawsuit Appeals, which shall be resolved in accordance with Section 20.16.

(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 20.14 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 20.14.

(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 and retail mixed use 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 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 Approved plans and specifications of the Alternate Replacement Facilities.

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

(h) 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.

(i) 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.

(j) 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.

**Section 20.15 Disputes Regarding Disapproval of a Proposed Major Transferee or Lessee's Diligent Pursuit of Marina Lawsuit Appeals or Reasonable Approval of Marina Consultant or Marina Standards.**

(a) If the City Manager determines that (i) a Proposed Major Transferee does not satisfy the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit "A"** attached hereto or (ii) Lessee has not been reasonable in its approval of the Marina Consultant or (iii) the Marina Standard shall be amended in accordance with the City's proposed updated Marina Standard and not the Lessee's proposed updated Marina Standard, and if such matter is not resolved by the designated representatives of the City and Lessee as provided in Section 20.13(a) above, then solely with respect to any such determination made by the City Manager, Lessee, as its sole remedy, may submit such matter to a panel of experts for a binding determination in accordance with this Section 20.15(a) (an "**Arbitrator**"). For the avoidance of doubt, in the event the City Manager exercises his or her right to seek the City Commission's direction or Approval of a Proposed Major Transferee, Developer shall not have the right to submit the City Commission's determination or disapproval of a Proposed Major Transferee to arbitration pursuant to this Section 20.15, but the City Commission shall be subject to the same time period and standards of judgment as would apply to the City Manager as provided in **Exhibit "A"**.

(b) If Lessee elects to proceed with an Arbitrator in accordance with this Section 20.15, the determination of whether (i) a Proposed Major Transferee is an Acceptable Owner, (ii) Lessee has not been reasonable in approving the Marina Consultant or (iii) the Marina

Standard shall be amended in accordance with the City's proposed updated Marina Standard or the Lessee's proposed updated Marina Standard, as applicable, will be made by (a) an expert selected jointly by the City and Lessee, or (b) if the City and Lessee fail to agree upon a single expert, by an expert selected by the City, an expert selected by Lessee and a third expert appointed by the experts selected by the Parties. Any Arbitrator or expert panelist hereunder (x) with respect to a determination under clause (i) above, will have at least ten (10) years of professional experience in the commercial real estate development or retail industry as a legal or other consultant, (y) with respect to a determination under clause (ii) or (iii) will have at least ten (10) years of professional experience in the marina 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).

(c) 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.

(d) With respect to whether a Proposed Major Transferee satisfies the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to Exhibit A, the Arbitrator will determine that such Proposed Major Transferee either satisfies such definition and criteria or fails to satisfy such definition and criteria. With respect to whether Lessee was reasonable in its approval of the Marina Consultant, the Arbitrator will determine that Lessee was reasonable in its approval of the Marina Consultant or unreasonable in its approval of the Marina Consultant. With respect to whether the Marina Standard shall be amended in accordance with the City's proposed updated Marina Standard or the Lessee's proposed updated Marina Standard, the Arbitrator will determine whether the City's proposed updated Marina Standard or the Lessee's proposed updated Marina Standard is commensurate with maintaining the Miami Beach Marina as a world class marina, as intended by this Lease **[OPEN – errata will include provision for arbitration tied to decision between City's proposed updated Marina Standard and Lessee's proposed updated Marina Standard]**. 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 20.16 Disputes Regarding Diligent Prosecution.**

(a) Any dispute arising under this Lease with respect to whether Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in good faith through the applicable Court of Appeal (a “**Prosecution Dispute**”) will first be submitted, by written notice (“**Notice of Dispute**”), to a designated representative of the City and a designated representative of Lessee who will meet at the City’s place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such Prosecution Dispute. Any decision of the representatives will be final and binding on the Parties. In the event the representatives are unable to resolve any Prosecution Dispute within ten (10) days after receipt of the Notice of Dispute, then Lessee, as its sole remedy, may submit such matter to JAMS Miami Center for resolution on an expedited basis without any pre-hearing discovery before an arbitrator (the “**Neutral**”). Lessee shall coordinate any Prosecution Dispute with any Prosecution Dispute brought under the Development Agreement such that only one Prosecution Dispute is brought against the City.

(b) If Lessee elects to proceed with a Neutral in accordance with Section 20.16(a) the determination will be made by (i) an expert selected jointly by the City and Lessee from the panel of Neutrals at Jams Miami Center, or (ii) if the City and Lessee fail to agree upon a Neutral, by an expert selected by the City from the panel of Neutrals at Jams Miami Center, a Neutral selected by Lessee from the panel of Neutrals at Jams Miami Center and a third expert appointed by the Neutrals selected by the parties. Any Neutral or expert panelist hereunder will be a certified mediator with at least ten (10) years of professional experience litigating commercial contract disputes. 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 Neutral shall have discovery rights in connection with a Prosecution Dispute hereunder. The proceeding before the Neutral 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 JAMS Expedited Arbitration Procedures (as amended hereby).

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

(d) The Neutral will determine that Lessee either did proceed diligently and in good faith to defend a Marina Lawsuit, including the exhaustion of all appeals through the applicable Court of Appeal, or did not proceed diligently and in good faith to defend a Marina Lawsuit, including the exhaustion of all appeals through the applicable Court of Appeal. If any matter submitted to the Neutral hereunder is settled by agreement between the parties prior to, and independently of, the final determination of the Neutral, any and all expenses of such binding determination (including fees of the Neutral) will be shared equally by the parties; otherwise, the expense of such binding determination resolved by final determination of the Neutral (including



fees of the Neutral) will be borne by the party against whom such determination has been concluded.

**Section 20.17 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 20.17 survive the termination of this Lease.

**Article XXI**  
**PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS;**  
**INDEMNIFICATION**

**Section 21.1 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 (x) Lessee and any contractor in privity with Lessee or subcontractor in privity with Lessee's general contractor(s) or any other subcontractor and (y) Master Sublessee

and any contractor in privity with Master Sublessee or subcontractor in privity with Master Sublessee's general contractor(s) or any other subcontractor, in each case, 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, any Subleasehold Mortgagee, 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

(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, which notice may be included in the recorded memorandum of this Lease, 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 21.2 Contesting Liens.** If Lessee desires to contest any such lien as described in Section 21.1, 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 21.3.

**Section 21.3 Indemnification.**

(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) the use and operation of the Leased Property or any part thereof which is not in compliance with the terms of this Lease, (ii) the negligent acts or omissions of Lessee or its employees, agents, partners, principals, Master Sublessee, Space Lessees, or contractors; (iii) 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 it will cause any contracts entered into by Lessee and its general contractor(s) or other contractors in privity with Lessee or entered into by Master Sublessee and its general contractor(s) or other contractors in privity with Master Sublessee, in each case, for any work performed on the Leased Property, including the Marina Improvements and Alternate Replacement Facilities, as applicable, to include the indemnities required by this Section 21.3 from the general contractor(s) or other contractors in privity with Lessee or Master Sublessee, as applicable, in favor of Lessee and the City.

(e) The foregoing agreements of indemnity are in addition to and not by way of limitation on any other indemnities or other covenants herein.

**Section 21.4 Environmental Matters. [OPEN]**

(a) Defined Terms.

(i) **“Environmental Condition”** means (A) any set of physical circumstances in, on, under, or affecting the Leased Property, whether or not yet discovered, 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 Existing Marina Lessee, any Predecessor Marina Lessee, Lessee, Master Sublessee or any Space Lessee or their respective officers, employees, agents, contractors, licensees, managers, operators or invitees on the Leased Property, as expressly set forth in clauses (1), (2), (3) and (4) below, or (B) without limiting any of the foregoing or clauses (1), (2), (3) and (4) below, any Existing Environmental Condition.

(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 the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts, provided that the presence of any underground storage tanks shall be an Environmental Condition hereunder without regard to the date on which such underground storage tanks were introduced on the Leased Property;

(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; and any other federal, state, regional or local statutory or common law or regulation relating to pollution of protection of the environment.

(iii) “**Existing Environmental Conditions**” means the following:

(1) Any release or threatened release the source of which is reasonably determined to be from the existing fuel storage, distribution and dispensing system including, without limitation, the tanks, lines, pumps, dispensing equipment and all associated equipment.

(2) Any hazardous substance known or discovered during the development process that is consistent with or reasonably expected to be caused by, or the result of, the historical use of the Leased Property as a petroleum storage facility.

(3) Elevated levels of arsenic in the soil and/or groundwater which can reasonably be determined to be the result of importation of soils used to fill the Leased Property in the past.

(iv) “**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.

(v) “**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.

(vi) “**Environmental Claim**” 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 (A) but only to the extent caused by reason of the operations of Existing Marina Lessee, any Predecessor Marina Lessee, Lessee, Master Sublessee or any Space Lessee, or their respective officers, employees, agents, contractors, licensees, managers, operators or invitees on the Leased Property or (B) in connection with an Existing Environmental Condition;

(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 (A) but only to the extent caused by reason of the operations of Existing Marina Lessee, any Predecessor Marina Lessee, Lessee, Master Sublessee or any Space Lessee, or their respective officers, employees, agents, contractors, licensees, managers, operators or invitees on the Leased Property or (B) in connection with an Existing Environmental Condition; or

(3) The violation, or alleged violation, of any Environmental Laws at the Leased Property (A) but only to the extent caused by reason of the operations of Existing Marina Lessee, any Predecessor Marina Lessee, Lessee, Master Sublessee or any Space Lessee, or their respective officers, employees, agents, contractors, licensees, managers, operators or invitees on the Leased Property or (B) in connection with any Existing Environmental Condition;

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 Commencement Date.

(vii) **“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 Existing Environmental Condition at, about, or affecting the Leased Property;

(2) 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 Commencement Date; or

(3) 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 Commencement 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, the City Parties and the RDA and their respective successors and assigns from and against, and shall reimburse the City, the City Parties and the RDA and their respective successors and assigns, for any and all Environmental Claims, whether meritorious or not, brought against the City and/or the RDA 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;

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

(v) nothing contained herein shall be deemed to limit in any way any direct liability that Lessee may have to third parties, including Governmental Authorities, for any violation at, on or under the Leased Property under any Environmental Laws.

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.

**Section 21.5 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 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 XXII  
CONDEMNATION**

**Section 22.1 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; 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, 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; subject, however, to the rights of the Protected Lenders, which shall have a first priority right and option to retain, apply and disburse the Lessee's, or Master Sublessee's share, as applicable, of 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, 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, together with the value of the City's remainder interest in the Lessee Improvements which have been taken; and

(iii) 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.

(c) For purposes of this Article, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be deemed a Taking.

## **Section 22.2 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 22.1, then this Lease shall continue in full force and effect; and Lessee's obligation to pay Minimum Annual Guaranteed Rent shall be proportionately reduced to reflect the reduction in space and use of the Leased Property. If the parties are unable to agree on a reduced Rent calculation then the provisions of Section 20.13 shall govern.

(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 owed to Lessee, in accordance with the requirements of its First Leasehold Mortgage, Mezzanine Financing documents of First Subleasehold Mortgage, as applicable.



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

(iii) Second, 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 and unimproved;

(iv) 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; 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 22.3 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 19.10(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 XIX until the restoration has been completed and Lessee and the City have received their respective shares thereof pursuant to this Article XXII; and

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

**Section 22.4 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 22.5 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 22.6 Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding described in this Article XXII shall be paid in accordance with the law governing same, as determined by the court, if appropriate.

**Article XXIII**  
**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. 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 XXIV**  
**SURRENDER OF THE LEASED PROPERTY**

**Section 24.1 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; provided, however, in connection with any termination or non-renewal of the Submerged Land Lease, whether at the expiration of the Term or otherwise, Lessee, at Lessee's sole cost and expense, shall vacate Area 2 and remove all structures and equipment thereon in accordance with the requirements of the Submerged Land Lease and any other requirements of the Board of Trustees or any Governmental Authorities.

(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.

(c) Lessee shall have no claim against the City for the value of the Lessee Improvements following any termination of this Lease, whether at the natural expiration of the Term or otherwise, except with respect to any claims against the City acting in its governmental capacity, including any claims relating to a condemnation by the City.

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.

**Article XXV  
NONDISCRIMINATION**

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 XXVI  
ADDITIONAL RESPONSIBILITIES**

**Section 26.1 Dockage Rates.** Commencing as of the Effective Date, annual fees for wet slips for boats of less than 40 feet charged to City residents that are Space Lessees shall not increase by more than five percent (5%) over the prior year's annual fees charged to such Space Lessees, provided, however, such restriction shall not apply to slips that are equipped with lifts and if rates are not raised by five percent (5%) each year, when such increase is imposed, it may reflect a cumulative increase of five percent (5%) for each year the rates were not raised during the prior five years.

**Section 26.2 Space Leases for Wet Slips.** Lessee shall enforce rules and regulations in all Space Leases for wet slips at the Leased Property and Lessee shall operate the Leased Property in accordance with all such rules and regulations, as amended from time to time and with copies of same provided to the City, at City's written request (provided that the City shall have the right to Approve any material changes to such rules and regulations), including the following:

1. NO WAKE within or approaching the Marina Premises.
2. Only vessels in good condition, and under their own power, shall be allowed in the Marina Premises.
3. In the event of an emergency during Owner's absence (e.g., breakdown of bilge pump, leaks, bad lines, etc.), Licensor is authorized to make or order necessary repairs, at reasonable charges, which will be charged to and paid/reimbursed by Owner.
4. Owner is reminded that Owner (and its vessels) is bound by the Boat Storage/Dockage License Agreement, and among other things thereunder, agrees to pay and be otherwise responsible for any injury or damage to persons or property, including personnel or property at the Marina Premises, arising in connection with the presence of Owner or Vessel in or around the Marina Premises. Owner must at all times comply with the provisions of its Boat Storage/Dockage License Agreement.

5. Disorder, indecorous conduct, or other conduct by Owner, crew, contractors or guests, that might injure a person, cause damage to property or harm the reputation of Owner's operation at the Marina Premises are prohibited. Noise shall be kept to a minimum at all times. Owner's crews, contractors and guests shall use discretion in operating engines, generators, radios, and television sets, etc., so as not to create a nuisance or disturbance. The use of mechanical tools (buffers, sanders, etc.) outside of the Vessel is prohibited. All vessels must have underwater exhaust in operation.
6. Pets are permitted only if they do not disturb others. Pets must be leashed within the confines of the Marina Premises and may be toileted only on grass areas. Laundry shall not be hung on any Vessel, walkway, dock, or pier at the Marina Premises.
7. Fires (charcoal, gas or otherwise) are not permitted on any pier or dock, unless prior written approval has been obtained from the Dock Master.
8. Painting, scraping, or repairing of gear or items shall not be permitted on any walkway, dock, or pier. The extent of repairs and maintenance permitted on Vessel shall be at the sole discretion of Licensor.
9. Vessels leaving for an extended absence must so notify the Dock Master's office. Licensor reserves the right to license or lease any slip when vacant and retain the proceeds thereof, and it is expected that transients will move for vessels on seasonal contracts or on advance reservations. Owner acknowledges dock space assignment is temporary and may be reassigned by Licensor for any reason Licensor deems valid and reasonable. Subleasing of dock spaces, transfer of Vessels between dock spaces, or from one dock space to another, shall not be allowed, except upon prior written approval of Licensor. Owner authorizes that in case of an emergency, or if the Vessel is not moved in accordance with a prior notice from Licensor, Licensor may move the Vessel from a particular dock space to any other place. Vessel may be moved to another dock space to make room for special events at the Marina Premises, and Licensor will make reasonable efforts to provide 30 days' notice.
10. The Rules of the Road and Navigational Laws of the United States apply to all vessels within, entering or leaving the Marina Premises.
11. Refuse shall not be thrown overboard. Garbage shall be deposited only in cans (garbins) or other receptacles provided for that purpose. Owner shall notify Licensor of anything that will not fit in these cans and Licensor will dispose of same. Licensor may assess a disposal fee for items that do not fit in trash and trash receptacles. No person shall discharge sanitation effluent, oil, fuel, spirits, flammable substances, or oily bilge liquids into or near the Marina Premises. If Vessel has a sanitation device, Owner must comply with the most advanced state-of-the-art requirements of the Coast Guard governing its manufacture, installation and use. Every sanitation device must be properly functioning at all times while Vessel is in the Marina Premises.
12. Vessel shall not be used for commercial or business purposes, and advertising or soliciting shall not be permitted on any vessel within the Marina Premises. No Owner or Vessel may use the Marina Premises, its name, address, or phone number, for commercial or business purposes. No "for sale" or "for hire" signs may be put on any Vessel, unless prior written approval has been obtained from the Dock Master. Commercial vessels in the commercial zone with written authorization from Licensor are excepted.
13. Swimming, diving, and fishing are prohibited anywhere in the Marina.
14. Owner shall not store supplies, materials, accessories, or debris on any walkway, dock, or pier and shall not construct or place thereon any locker, chest, cabinet, or similar structure, except upon written approval from Licensor.
15. Each gate key and lift remote will be subject to a \$100 deposit. There will be a reasonable charge for any replacement of same. Owner shall not provide any gate key to any vendor or other person, nor shall Owner open any gate for any vendor. Each vendor must check in with the Dock Master each time such vendor enters the Marina Premises.
16. No photography, filming or other video sessions shall be allowed on the Marina Premises without

- the prior written consent of Licensor.
17. No event in which more than 15 people participate may be held at the Marina Premises without the prior written consent of Licensor.
  18. License day starts at 6:00 a.m. Any Vessel using the Marina Premises prior to 6:00 a.m. will be charged for the previous day. Check out time shall be 12:00 noon. Any Vessel present in Marina after 12:00 noon will be charged for the following day.
  19. An Owner or Vessel checking out of the Marina Premises shall report to the Dock Master's office and settle accounts prior to leaving. It is suggested that all Owners leave a forwarding address in order to permit prompt handling in the event a telephone call or mail is received for them. However, in any event, Licensor assumes no responsibility whatsoever for forwarding mail or messages. All personal property must be removed from the Marina Premises when the license is at an end. Licensor assumes no responsibility for any personal property that may be remaining. Licensor is entitled to immediately charge against the account of the submitted credit/debit card or other account any and all charges incurred by Owner or any other person connected with Vessel, including Owner's crew, contractors and guests.
  20. Licensor governs and limits Marina parking spaces in the parking areas. The following are not allowed on the Marina Premises ("Prohibited Vehicles"): (a) motor homes or overnight-type vehicles of any kind, (b) trailers of any kind, or (c) commercial vehicles of any kind. Any Prohibited Vehicle on the Marina Premises may, in Licensor's sole discretion, be towed away and Owner shall be solely responsible for any incurred charges. Owner shall indemnify and hold Licensor harmless for any and all damages.
  21. No person(s) may operate or ride any vehicle, motorcycle, bicycle, scooter, skateboard, roller blades, hover board or similar device on any dock or pier, and same must be stored on the Vessel or in designated areas. No drones may be operated within the Marina Premises.
  22. The Department of Environmental Resources Management of Miami-Dade County (DERM) prohibits multiple vessels/boats in slips. Dinghies and tenders shall be stored on Vessel, not in slip and not on docks, fingers or piers.
  23. Owners shall not refill his/her/its fuel tanks while Vessel is in any slip. Refueling shall only occur at the fuel dock
  24. All charter operators, contractors and outside workers operating or working in the Marina must have liability insurance, and all licenses, permits and certificates required by all governing agencies, current and in full force. Owner shall at all times comply with any insurance requirements set forth in its Boat Storage/Dockage License Agreements, and Licensor reserves the right to require Charter Operators to maintain reasonable additional insurance.
  25. Employees of Licensor may not be hired to perform work on any vessel at the Marina Premises, nor may they be hired to perform any other sort of task at the Marina Premises for or on behalf of any Owner, patron, crewmember, guest or other person.
  26. Unauthorized use of Marina-supplied fresh water is prohibited.

## **Article XXVII 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 XXVIII  
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 XXIX  
TIME IS OF THE ESSENCE**

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

**Article XXX  
MISCELLANEOUS PROVISIONS**

**Section 30.1 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 30.2 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 30.3 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 this Lease. 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, bankruptcy awards and orders, and those incurred on appeal.

**Section 30.4 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.

**Section 30.5 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:

MB Marina Park, LLC  
17330 Preston Road, Suite 220A  
Dallas, Texas 75252  
Attention: Bryan C. Redmond  
T: 972-789-1400  
F: 972-763-0300  
Email: [bryan@suntex.com](mailto:bryan@suntex.com)

MB Marina Park, LLC  
300 Alton Road, Suite 208  
Miami Beach, Florida 33139  
Attention: General Manager

with a copy to:

Powell Coleman & Arnold  
8080 North Central Expressway, Suite 1380  
Dallas, Texas 75206  
Attention: Brian DeVoss  
T: 214-890-7122  
Email: [bdevoss@pcallp.com](mailto:bdevoss@pcallp.com)

and

Marina Park Commercial LLC  
3310 Mary Street  
Suite 302  
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 30.5.

**Section 30.6 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 30.7 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 to Lessee without such First Leasehold Mortgagee's prior written consent.

**Section 30.8 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 30.9 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 30.10 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 30.11 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 30.12 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 Section 15.1, Article XIX, Article XXII, Section 10.1(a)(vi) and Sections 10.1(b) through 10.1(m) of this Lease. All other amendments must be approved by majority vote of the City Commission, subject to the requirements of the City Charter and applicable law, except that the provisions of Sections 3.1, 6.1 through 6.4 and 12.7 may not be modified except by approval of such modifications by a majority of the voters voting thereon in a City wide referendum in the same manner as required for approval of the initial Lease pursuant to Section 1.03(b)(1) of the City Charter. 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.

**Section 30.13 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 30.14 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 or electing to have the City Commission determine 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 30.15 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 30.16 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 30.17 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 or the Replacement Facilities, as applicable, or the Marina 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 30.18 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 30.19 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 30.20 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 30.21 Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

**Section 30.22 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 30.23 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, by means of [ ] physical presence or [ ] online notarization, 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

MB MARINA PARK, LLC

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Print Name:

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

JOINDER OF MIAMI BEACH REDEVELOPMENT AGENCY

The Miami Beach Redevelopment Agency (the "RDA") hereby joins in this Lease solely to the extent that the RDA is affected or obligated by the terms of this Lease and by reason of certain leases, licenses or permits held by the RDA with respect to the Miami Beach Marina, including, without limitation, the lease pursuant to which the submerged lands area leased to the City and the RDA by the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida, as the same may be amended.

Signed, sealed, and delivered  
in the presence of:

MIAMI BEACH REDEVELOPMENT AGENCY

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**  
**Acceptable Owner Definition**

A. “Acceptable Owner” means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. The Proposed Major Transferee is not a Foreign Instrumentality other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway, Switzerland and Mexico, or a Person Controlled by any of the foregoing countries.

2. The Proposed Major Transferee must not be owned, or Controlled by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction. But the foregoing shall not apply to individuals or entities owning less than a twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and control the business and affairs of the proposed transferee.

3. The Proposed Major Transferee must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, creed, color, sex or national origin.

4. A Proposed Major Transferee , or an Affiliate of such Proposed Major Transferee Controlling such Proposed Major Transferee or Person with an ownership interest in such Proposed Major Transferee Controlling such Proposed Major Transferee, shall have had no violations of any applicable law against such Proposed Major Transferee, or any other property owned or managed by such Proposed Major Transferee, within Florida, which have resulted in a forfeiture of the Proposed Major Transferee’s entire interest in such other property.

5. A Proposed Major Transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such Proposed Major Transferee or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of such Proposed Major Transferee) have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five (5) years (bankruptcy filings by Affiliates shall not disqualify a Proposed Major Transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).



B. “Acceptable Owner Criteria”: The foregoing categories of requirements set forth in paragraph A above are collectively defined as the “Acceptable Owner Criteria.”

C. Evaluation of the Acceptable Owner Criteria:

Solely for the purpose of evaluating whether the Proposed Major Transferee has met the Acceptable Owner Criteria, the Proposed Major Transferee shall provide the following information to the Lessee and certify that the information provided by the Proposed Major Transferee is true and correct and that the Proposed Major Transferee meets or exceeds the Acceptable Owner Criteria:

1. information sufficient for the City or any outside vendor engaged by the City to perform a due diligence investigation pursuant to paragraph D below, including copies of any applicable operating licenses;
2. identification and summary description of its principals and its major real estate or other investments;
3. a list of all bankruptcies filed by such Proposed Major Transferee or to which such Proposed Major Transferee was a party-bankrupt, if any; and
4. such other evidence as is commercially reasonably necessary as determined by Lessee to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed Transfer to a Proposed Major Transferee, City may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Lessee’s or such Proposed Major Transferee’s sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that City’s right to conduct its own due diligence shall not expand or be deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a Proposed Major Transferee constitutes an Acceptable Owner. City shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Lessee or such Proposed Major Transferee, to review the information upon which the Proposed Major Transferee’s certifications were based, for the purpose of determining whether the certifications and/or information provided to the City is accurate and complete. Lessee shall, or shall cause such Proposed Major Transferee to, reimburse City, upon demand, for any reasonable costs incurred by City in connection with such Transfer or proposed Transfer to a Proposed Major Transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such Proposed Major Transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. Confirmation/Approval Process for Proposed Transferees:

Regarding the City's confirmation that a Proposed Major Transferee is an Acceptable Owner, or the City's approval of a Transfer requiring its approval under the Lease, the parties hereby agree that:

1. The City Manager shall rely solely on the Proposed Major Transferee's certification that the Proposed Major Transferee meets the Acceptable Owner Criteria, along with the information provided by the proposed transferee and with respect to any Proposed Major Transferee, the results of any due diligence investigation performed by the City.

2. The City Manager shall not unreasonably withhold the City's confirmation if the proposed transferee complies with the Acceptable Owner Criteria.

3. The City Manager shall not unreasonably withhold the City's Approval of a Transfer, except that with respect to a Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), such Transfer shall be subject to the prior written approval of the City Commission, which may be granted, conditioned or withheld by the City Commission in its sole discretion; and

4. If a proposed Transfer requires the City's confirmation or Approval, Lessee shall deliver written notice to the City, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (v) the materials described in paragraph C above.

5. The City Manager shall have up to forty-five (45) days after the delivery of such written notice and the information required under paragraph C above, to determine whether, on a commercially reasonable basis, the Proposed Major Transferee meets the Acceptable Owner Criteria if required. The City Manager shall have up to sixty (60) days after the delivery of such written notice and the information required under paragraph C above whether to Approve in accordance herewith a Transfer that is not to a Proposed Major Transferee and which requires the City's approval under the Lease.

6. Provided that no Event of Default is then continuing, Lessee's request for Approval of a Transfer in accordance with Article XI of the Lease shall be deemed Approved if the first correspondence from Lessee to the City requesting such Approval is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER ARTICLE XI OF THE GROUND LEASE AGREEMENT, DATED AS OF JANUARY 1, 2022, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED" and is accompanied by the information and documents required above and City fails to respond or to deny such request for Approval in writing within such sixty (60) day period. Any Transfer shall be subject to the deemed Approval provisions set forth above in this subparagraph

E.6, provided, however, that the City Commission shall have sixty (60) days after receipt of written notice from Lessee of any proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), to approve or disapprove of such proposed Transfer, and if the City has not notified Lessee, in writing, of the City Commission's approval of such Transfer within such sixty (60) day period, then such Transfer shall be deemed approved.

7. If the City notifies Lessee, in writing, within the first thirty (30) days of such sixty (60) day period that the information submitted is, on a commercially reasonable basis, incomplete or insufficient (and specifies in what ways it is incomplete or insufficient), then Lessee shall supplement such information, on a commercially reasonable basis, and the City Manager (or City Commission, with respect to Transfers to Foreign Instrumentalities requiring City Commission approval) shall have twenty (20) days after such supplemental information is provided to make its determination whether the proposed transferee meets the Acceptable Owner Criteria or to Approve a Transfer that requires the City's approval under the Lease.

8. If the City Manager does not confirm that the Proposed Major Transferee does not meet the Acceptable Owner Criteria or disapproves a Transfer that requires the City's approval under the Lease, the City Manager shall provide to Lessee specific written, commercially reasonable reasons for such action. The failure to object to the Proposed Major Transferee or Transfer within the applicable time period set forth above shall be deemed to be the confirmation by the City of the Proposed Major Transferee as an Acceptable Owner or Approval of the proposed Transfer, except with respect to a proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), which the City Commission must expressly approve in writing, as provided above, in order for such Transfer to be effective.

9. No confirmation by the City of a Proposed Major Transferee as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping the City from later claiming that said Acceptable Owner is no longer developing, operating or maintaining the Leased Property according to the terms of this Lease.

F. Interpretation:

1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of "sole discretion" is used.

2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

**EXHIBIT “B”  
Certificate of Formation**

**[see attached]**

# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "MB MARINA PARK, LLC", FILED IN THIS OFFICE ON THE SECOND DAY OF JULY, A.D. 2020, AT 12:49 O`CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State

3178080 8100  
SR# 20206044640

Authentication: 203218583  
Date: 07-02-20

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF FORMATION**

**OF**

**MB MARINA PARK, LLC**


This Certificate of Formation of MB Marina Park, LLC, dated as of July 2, 2020, is being duly executed and filed by the undersigned authorized person to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, *et seq.*).

1. **Name.** The name of the limited liability company formed hereby is MB Marina Park, LLC (the “Company”).

2. **Registered Office.** The address of the registered office of the Company in the State of Delaware is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808.

3. **Registered Agent.** The name and address of the registered agent for service of process on the Company in the State of Delaware are Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate of Formation as of the date first above written.

  
\_\_\_\_\_  
Brian P. DeVoss,  
Authorized Person

**EXHIBIT “C”**  
**Public Benefit Improvements**

- Resiliency Features and Improvements for the Park:
  - A stormwater management system capable of retaining and disposing runoff in accordance with the City of Miami Beach as well as the F-DOT design storm requirements.
    - Miami-Dade County RER (DERM) 5-Year, 1-Hour 3.2” rainfall storm
    - Miami-Dade County RER (DERM) 5-Year, 24-Hour, 6” rainfall storm
    - City of Miami Beach 10-Year, 24-Hour, 8.75” rainfall storm (which includes a 1.25 factor of safety)
    - FDOT 100-Year, 24-Hour, 13” rainfall storm
  - Water management for park on-site stormwater, which may include:
    - The topography sloped and pitched to manage the water quality interface between stormwater, groundwater and baywater.
    - Cistern to capture water runoff during storm events and provide reuse opportunity to irrigate planting.
  - The park will provide different areas to include open green spaces, benches, drinking fountains, outdoor living rooms enclosed with landscaping.
  - Provide landscape to encourage habitat areas for pollinators, including at least 70% of plants and trees to be native.
  - Provide lighting to limit backlight, up light and glare, within temperature ranges in accordance with City safety requirements, including but not limited to light poles, lighted bollards and landscaping lighting.
  - Information and educational signage to be installed to inform and inspire the public about resiliency and sustainability efforts being made in the property/park.
- Water quality improvements for offsite stormwater management, which shall include the following, provided funding is available:
  - Cistern to capture water runoff during storm events and provide reuse opportunity to irrigate planting.
  - Stormwater water management for water quality to be for a total capacity of 16,000 GPM; with an aspirational goal to achieve 24,000 GPM (construction and installation only; City to maintain all wells and stormwater management facilities associated with this requirement)
- Alton Road ROW Enhancements
- Baywalk Enhancements in front of Area 1 and Area 9, exclusive of the sea wall, bulkhead, rip-rap and associated support structures, which may include:
  - Pavers, lighting, benches, and landscaping
  - Artwork spent on project above and beyond the AIPP requirements

**EXHIBIT “D”**  
**Mandatory Project Components**

1. Approximately 57,000-75,000 square feet
2. Improvements shall have a minimum value of \$22,500,000, subject to reimbursement to Lessee from the City to the extent of the Upland Improvement Credits;
3. Restaurant uses must include outdoor dining, subject to the Prohibited Uses;
4. Not less than one acre of Baseline Park; and
5. At least eighty (80) parking spaces.



**EXHIBIT “E”  
Area 1 Standard**

**[see attached]**

# CITY OF MIAMI BEACH

## MARINA STANDARDS (AREA 1) AND FINES IN LIEU OF DEFAULT

Defined terms shall be the same as provided in that certain Ground Lease Agreement (the "Lease") as of even date herewith by and between THE CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation (the "City") and MB MARINA PARK, LLC, a Delaware limited liability company, (the "Marina Lessee") except as specifically provided otherwise herein. The following definitions apply to these terms throughout the standards:

- Adequate: As much as necessary for the intended duration of use
- Appropriate: Suitable to the level of service or as specified in the operating plan
- Clean: Free from dirt, marks, stains, or unwanted matter consistent with City of Miami Beach Cleanliness Standards exceeding a score of 2 (Attachment 1)
- Neat: Arranged in an orderly, tidy manner
- Operational: In use or ready for use
- Sufficient: Enough for the number of persons
- Well-maintained: Kept in good order or condition

Standards are ranked and penalties assessed in the in the following manner:

RANKING	DESCRIPTION	Fine
A	<b>Major:</b> Priority conditions or practices create or have the potential to exert a <b>significant</b> impairment to resident, visitor or employee health and safety, City resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	Immediate Fine shown with each A ranked standard below unless expressly stated otherwise in the specific designated category.
B	<b>Moderate:</b> Second Priority conditions or practices create or have the potential to exert a <b>moderate</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per day upon expiration of Written Notice to Cure.
C	<b>Minor:</b> Third Priority conditions or practices create or have a potential to exert a <b>minor</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per week upon expiration of Written Notice to Cure.

For avoidance of doubt, where the term “World Class” is used herein it shall be deemed complied with as long as the Marina Lessee is in compliance with the specific criteria for maintenance and operations set forth in this Exhibit. Standards shall be updated to reflect consultant recommendations for a World Class Marina, as provided in the Lease.

Penalties shall be adjusted for the Consumer Price Index changes on each 10-year anniversary of the lease.

To the extent the items below are not currently provided by the Marina Lessee, but are required to be provided in accordance with the terms of the Lease, the Marina Standard’s shall not apply until such time that the item is required to be installed or performed in accordance with the terms and conditions of the Lease.

If the Marina Lessee fails to comply with any maintenance or operational standard set forth below then the City may elect to issue an infraction fine by delivering written notice to the Marina Lessee (each notice to be referred to as an “**Infraction Notice**”). An Infraction Notice shall be effectively delivered if sent by e-mail to [mbminfo@suntex.com](mailto:mbminfo@suntex.com) and subsequently sent by overnight mail on the following business day to the Marina Lessee in accordance with the notice requirements set forth in the Lease or hand delivered to the Marina Lessee to the front office or to the Marina Manager. Additionally, on a calendar quarterly basis, the City shall deliver the Marina Lessee a written notice containing an invoice for all fines incurred during the previous calendar quarter that remain unpaid as set forth herein and such fines shall become due and payable as Base Rent within thirty (30) days of the receipt by the Marina Lessee of the quarterly fine notice. If the fines are not paid then the City shall send a final notice pursuant to the Default Notice Procedure and ten days after receipt of such final notice, if the fines have not been paid, then the City may treat the failure as a breach entitling the City to exercise its remedies in Article XX of the Lease. Marina Lessee may elect to contest the infractions or fines received within a respective quarter in accordance with Article 20.13 in the event the quarterly fines exceeds a monetary threshold of \$15,000.

Notwithstanding anything to the contrary in this Lease, during construction of the Replacement Facilities and/or the Alternate Replacement Facilities, the standards for maintenance of Area 1 shall be as set forth in Article X of the Development Agreement until the Completion of Construction for the Replacement Facilities or the Alternate Replacement Facilities.

“**Fine Notice Procedure**” means delivery of a notice to pay fines, to all Lessee notice parties, via hand delivery or overnight delivery with a copy via email, with a legend in bold and all caps at the top of the notice that states the following: THIS IS A NOTICE OF FAILURE TO PAY FINES AS REQUIRED PER THE LEASE. The notice shall set forth the amount of the fines, the infraction that the fines relate to and the date by which such fines must be paid.

Anything to the contrary notwithstanding in the Standards set forth below, except for infractions that jeopardize the public health, safety or welfare, if the Infraction is such that it cannot reasonably be constructed or completed within the stated notice period, due to required construction, product lead times, or regulatory requirements (i.e building permits), Marina Lessee shall not be subject to fine as long as the Marina Lessee is diligently pursuing completion of the correction in an expeditious manner after receipt of the in accordance with the Notice Infraction.

Standard Number	FACILITY STANDARDS AREA 1	A, B, C Ranking	FINE/CURE PERIOD
	<b>Office and Retail Facilities</b>		
1	<p><b>Building Structures</b> - The Marina Lessee shall maintain the new replacement office and retail facilities in Area 1, including the building structures, store fronts, systems and surfaces to a world class standard to ensure that the original quality is reasonably maintained and protected against deterioration. Roofs, gutters, and downspouts shall be Well-maintained and clear of obstructions. Rooftop ventilation, HVAC, electrical, plumbing and other systems shall be well-maintained and operational.</p> <p>Prior to the construction of the new replacement office and retail facilities in Area 1, Marina Lessee shall reasonably maintain the existing marina facility in a Clean manner, and roofs, gutters, and downspouts shall be reasonably maintained and clear of obstructions. Rooftop ventilation, HVAC, electrical, plumbing and other systems shall be reasonably maintained and Operational.</p> <p>The Marina Lessee shall maintain the new replacement office and retail facilities in Area 1 to a world class standard, including building structures, systems and surfaces to ensure that there is no deferred maintenance and renewal and replacement projects are completed in scheduled timeframes and to ensure that the original quality is maintained and protected against deterioration..</p> <p>The Marina Lessee and the City shall inspect the physical structure of the new replacement office and retail facilities and its component parts every five (5) years after completion of the new office and replacement facilities, at the expense of the Marina Lessee, and using a contractor reasonably acceptable to both City and Marina Lessee, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the next five (5) years.</p>	A	<p>Failure to maintain facilities resulting in deferred maintenance identified in facility inspection: 20 percent of deferred maintenance costs per year and each additional year thereafter.</p> <p>Failure to complete scheduled renewal and replacement projects: 10 percent of scheduled renewal and replacement projects per year and each additional year thereafter.</p> <p>Failure to maintain existing marina facility as required herein: \$250 per 1st violation each year and, following 48 hour notice, \$1,000 thereafter.</p>
2	<p><b>Landscaping/Baywalk/Grounds</b> - The Marina Lessee shall maintain all greenspaces, Baywalk, right-of-ways, access areas, surface parking and waterways contained within Area 1, or the areas contained within in the Baywalk Easements, in good, Clean healthful and safe order with Well-maintained landscaping and furnishings, with smooth and evenly covered surfacing material so as to ensure:</p> <ul style="list-style-type: none"> <li>a Cleanliness Index for parks, greenspace, Baywalk, right-of-ways, access areas, surface parking and waterways, and surface parking as well as waterways as defined in Attachment 1 that shall be maintained in a Clean appearance exceeding 2 of the Cleanliness Index and a City of Miami Beach Public Area Appearance Index for exterior greenspace, Baywalk and access areas as defined in Attachment 2 exceeding a score of 2.</li> </ul>	A	<p>Failure to properly remove debris, litter or garbage, or otherwise satisfy the Cleanliness Index for greenspace, Baywalk and access areas as required herein: \$250 per 1st violation each year and \$1,000 thereafter;</p> <p>Failure to maintain</p>

			public areas or otherwise satisfy the Public Appearance I Index for greenspace, Baywalk and access as required herein: \$250 per 1st violation each year and \$1,000 thereafter.
3	<p><b><u>Baywalk, Seawall and Drainage infrastructure, Pathways, Sidewalks, and Ramps</u></b> –The Marina Lessee shall maintain the Baywalk, seawall and Baywalk draining infrastructure, pathways, sidewalks, and pedestrian ramps to ensure that quality is maintained and protect against deterioration. Surfaces shall be free of obstructions Well-maintained and free of tripping hazards, subject to minor obstructions during replacement or reconstruction activities, which shall be approved by the City in its proprietary and regulatory capacity, that are completed in a manner that allows for the least continuous disruption of public access as reasonably possible.</p> <p>The Marina Lessee and the City shall inspect the Baywalk, seawall and Baywalk drainage infrastructure, pathways, sidewalks, and pedestrian ramps every five (5) years, at the expense of the Marina Lessee, and using a contractor acceptable to both City and Marina Lessee, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the next five (5) years.</p>	A	<p>Failure to maintain resulting in deferred maintenance identified in facility inspection: 20 percent of deferred maintenance costs per year and each additional year thereafter</p> <p>Failure to complete scheduled renewal and replacement projects: 10 percent of scheduled renewal and replacement projects per year and each additional year thereafter.</p>
4	<p><b><u>Trash/Recycling</u></b> - The Marina Lessee shall provide Sufficient, conveniently located trash containers. Refuse shall be stored in covered, waterproof receptacles. Market available recyclable products shall be collected and recycled. The Marina Lessee shall maintain central refuse collection sites shall be Sufficient garbage collection areas so that garbage is not overflowing and enclosed with enclosures closed at all times unless refuse is being actively transferred to or from the container.</p>	A	\$100 per violation of open central collection sites after receipt of the Infraction Notice following each violation.
5	<p><b><u>Replacement of Furniture and Furnishings</u></b> -_The Marina Lessee shall provide the City with an annual inventory of furniture and furnishings available for use and intended to serve the general public and marina guests (benches, trash and recycling receptacles, storage containers, dock carts), including year of purchase, value, and these shall be</p>	A	Failure to replace in scheduled time frame: 10 percent of value of scheduled

	replaced at least every 10 years.		replacement projects per year and each additional year thereafter.
6	<b>Lighting/Illumination</b> - The Marina Lessee shall maintain lighting to be Adequate and Appropriate. Light fixtures shall be well-maintained and operational.	B	7-day notice to cure
7	<b>Public Signs</b> - The Marina Lessee shall maintain public signs appropriately located, accurate, and Well-maintained. Permanent signs shall be approved prior to installation. Temporary signs shall be professional in appearance.	B	
8	<b>Utilities</b> - The Marina Lessee shall maintain service areas Neat and Well-maintained. Utility lines shall be Neat, protected from slack and foot or vehicular traffic, and hidden from view as much as possible. Electrical panels shall be secured and unobstructed.	B	
9	<b>Cart Parking</b> - The Marina Lessee shall maintain storage for dock carts and parking for motorized dock carts in designated areas close to marina access point.	C	1-day notice to cure
10	<b>Fences and Walls</b> - Fences and walls are cleared of overgrowth and Well-maintained.	C	7-day notice to cure
11	<b>Flags</b> - The Marina Lessee shall maintain National, state, or City flags and comply with the United States Flag Code. Flags shall be a minimum size of 3'x 5'. Decorative flags and banners shall be Appropriate and Well-maintained. Flags of a maritime or nautical nature shall be displayed below the National Flag.	C	
<b>Public Areas – Interior</b>			
12	<b>Marina Office Waiting Area/Tenant Spaces</b> - The Marina Lessee shall provide a Clean and Well-maintained Marina office entrance and waiting area furnishings. Tenant spaces and store fronts shall be Clean and Well-maintained.	B	1-day notice to cure.
13	<b>Ventilation/Climate Control</b> - The Marina Lessee shall maintain public spaces adequately ventilated at a temperature consistent with reasonable visitor comfort.	B	
14	<b>Public Signage</b> - The Marina Lessee shall appropriately locate accurate, and Well-maintained public signs. Temporary signs shall be professional in appearance. Signage shall be Neatly arranged.	B	7-day notice to cure
15	<b>Illumination</b> - The Marina Lessee shall maintain lighting that is Adequate and Appropriate. Light fixtures shall be Clean and operational, with no empty sockets or burned-out bulbs.	B	7-day notice to cure
16	<b>Ice/Vending</b> - The Marina Lessee shall maintain Ice and vending machines or services free of rust or deterioration and Operational. Machine displays relate to marina themes or are generic in nature. Out of service machines have professional in appearance signage.	B	

	Machines must accept credit and debit cards.		
17	<b>Drinking Fountains</b> - The Marina Lessee shall maintain water fountains and water bottle filling stations, as may be constructed, Clean and Operational	C	7-day notice to cure
	<b>Safety</b>		
18	<b>Emergency Lighting/Exit Lights/Emergency Exits</b> - The Marina Lessee shall maintain exit lights, Emergency exits and routes as required by City of Miami Beach building and fire code.	A	\$100 per day for any deficiency for first 7 days, \$1000 per day thereafter.
19	<b>Fire Extinguishers</b> - The Marina Lessee shall maintain fire extinguishers in compliance with the City of Miami Beach building and fire code.	A	
20	<b>Smoke Detectors</b> - The Marina Lessee shall maintain Operational smoke in compliance with the City of Miami Beach building and fire code. Battery-operated detectors shall be tested monthly and batteries replaced at least yearly.	A	
21	<b>Fire Alarms and Pull Boxes</b> - The Marina Lessee shall maintain visible and accessible fire alarms and pull boxes in compliance with the City of Miami Beach building and fire code.	A	
22	<b>First Aid Kit</b> - The Marina Lessee shall have available, stocked, marked, a first aid kit that staff can easily locate.	B	1-day notice to cure
	<b>Restrooms/Showers/Laundry</b>		
23	<b>Public Restrooms</b> - The Marina Lessee shall maintain restroom facilities in good, Clean healthful and safe order and condition, ventilated, illuminated, and free from dirt, mud, rubbish, obstructions and physical encumbrances at a City of Miami Beach Restroom Index, as defined in Attachment 4, exceeding a score of 2.  Restrooms shall have hot and cold running water. Toilets, sinks, and urinals shall be Clean, free of stains and chips, and Operational. Toilet tissue and disposable towels or hand dryers are available. Soap shall be provided in bulk dispensers. The disposal containers shall be Clean and emptied at least daily. A cleaning inspection log shall be maintained and posted.	A	Failure to maintain public areas or otherwise satisfy the Restroom Index exceeding 2: \$250 per 1st violation each year and \$1,000 thereafter  1-day notice to cure for any restroom deficiency
24	<b>Emergency Instructions</b> - The Marina Lessee shall maintain Information posted with emergency assistance (fire, police, medical) and after-hours contact information.	A	\$100 per day for any deficiency for first 7 days, \$1000 per day thereafter
25	<b>Shower Stalls</b> - The Marina Lessee shall maintain shower stalls Clean, ventilated, and free of visible mold & mildew. Shower floors shall be equipped with non-skid surfaces. Showers that are out of service shall have professional in appearance signage and shall be made Operational as soon as possible	B	1-day notice to cure

26	<b>Shower Enclosures</b> - The Marina Lessee shall provide shower curtains are of Adequate length and width to fit the enclosure and to prevent water from flowing onto the outer areas, as well as to assure privacy. Shower curtains and enclosures shall be clean, free of mold and mildew, and well- maintained.	B	
27	<b>Water Supply</b> - The Marina Lessee shall maintain water pressure and temperature constant and comfortable. Extreme fluctuations do not occur. Faucets are accurately marked and Operational. Fixtures are Appropriate, low flow, securely installed, and properly sealed/grouted.	B	7-day notice to cure
28	<b>Security</b> - The Marina Lessee shall have signs posted stating that the Marina is not responsible for visitor's valuables.	B	
29	<b>Public Laundry</b> - The Marina Lessee shall maintain a minimum of two washers and dryers available for use by marina guests. Equipment shall be Clean, Well-maintained free of rust or deterioration, and Operational. Lint traps and dryers shall be inspected and cleaned daily. Washers and dryers shall be energy and water efficient. Equipment that is out of service shall have professional in appearance signage and shall be made Operational as soon as possible.	B	
30	<b>Dressing Area and Clothes Storage</b> - The Marina Lessee shall provide Lockers or clothes hooks (minimum 2 per stall) located in close proximity to the shower stall. Lockers shall be clean and rust-free, with working doors and hardware. Dressing area contains Adequate seating as Appropriate.	C	7-day notice to cure
31	<b>Mirrors</b> - The Marina Lessee shall provide Adequate mirrors for each sink. Mirrors shall be securely mounted, Clean, un-pitted, and free of cracks.	C	
<b>Maintenance Area Room</b>			
32	<b>Site Utilities, Equipment, and Delivery Area</b> - The Marina Lessee shall provide service areas and equipment that are marked, Well-maintained, and screened from public view as much as possible.	B	7-day notice to cure
33	<b>Organization</b> - The Marina Lessee shall maintain a Neat maintenance area with tools and equipment stored in an orderly fashion.	B	
34	<b>Storage</b> - The Marina Lessee shall Neatly and securely store parts, tools and supplies. Parts shall be stored off the floor on industrial shelves suitable for the weight of the parts and physical environment in which the shelves are used.	B	
35	<b>Floors</b> - The Marina Lessee shall maintain the maintenance area floor free of clutter and tripping hazards such as extension cords, power hoses, etc. Floor cracks shall be filled to prevent seepage.	B	



36	<b>Shop Lighting</b> - The Marina Lessee shall maintain lighting Adequate to perform marina maintenance activities safely. Fixed ceiling lighting and portable lights shall be Clean and Operational with no burned-out bulbs. Fluorescent light bulbs shall be contained in a Clean protective cover.	B	
37	<b>Pest Control</b> - The Marina Lessee shall manage pests in coordination with the designated NPS integrated pest management coordinator and Risk and Environmental Management Plans, provide pest control treatments in accordance with those plans and maintain records to demonstrate that such treatments were provided.	B	
<b>Maintenance Area/Room Safety</b>			
38	<b>Hazardous Materials</b> - The Marina Lessee shall collect, store, and dispose of hazardous materials in compliance with state and federal laws, and in accordance with risk and environmental management plans.	A	\$100 per day for any deficiency in this section for first 7 days, \$1000 per day thereafter.
39	<b>Safety Data Sheets</b> - The Marina Lessee shall maintain current safety data sheets as required by State & Federal Regulation	A	
40	<b>Fire Extinguishers</b> - The Marina Lessee shall maintain Operational fire extinguishers in compliance with the Federal regulations, State regulations, and City of Miami Beach building and fire code.	A	
41	<b>Smoke Detectors</b> - The Marina Lessee shall maintain smoke detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors are tested monthly and batteries are replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	A	
42	<b>Carbon Monoxide Detectors</b> - The Marina Lessee shall maintain carbon monoxide detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors shall test monthly and batteries replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	A	
43	<b>Eye-Wash Stations</b> - The Marina Lessee shall maintain emergency eyewashes in compliance with OSHA standards.	A	
<b>OPERATIONAL STANDARDS – AREA 1</b>			
<b>Accessibility</b>			
44	<b>Accessibility</b> – The Marina Lessee shall implement and operate facilities and services meet the requirements of the Americans with Disabilities and Architectural Barriers Acts and all other applicable laws related to accessibility.	A	\$100 per day for up to 28 days, \$1,000 per week thereafter.
<b>Services</b>			

	<b>Reservation Services</b>		
45	<b>Payment Methods</b> - The Marina Lessee shall maintain payment systems that honor credit cards (including MasterCard, Visa, American Express, and Discover), debit cards and other payment methods (personal checks, and gift cards) at the Marina Lessee's discretion.	B	1-day Notice
46	<b>Deposits</b> - The Marina Lessee shall, at its discretion, have the right to accept rental deposits.	B	
47	<b>Cancellations</b> - The Marina Lessee shall clearly state the slip rental cancellation and refund policy is in the slip rental agreement, and the policy is subject to approval by the City.	B	
48	<b>Availability</b> - The Marina Lessee shall maintain reservation services during business hours.	B	7-day Notice
49	<b>Knowledge of Slip Rental Staff</b> - The Marina Lessee shall have reservation agents that provide accurate information about rates, slip rental policies and marina services, local attractions, access, etc. that shall be available to the general public and the City.	B	
50	<b>Property Management Information Systems</b> - The Marina Lessee shall maintain a slip reservation system that is integrated with the Marina Lessee's property management information system and provides comprehensive reporting capabilities.	C	30-day Notice
	<b>Registration Services</b>		
51	<b>Hours of Operation</b> - The Marina Lessee shall operate the facilities and services in accordance with posted hours of operation. Hours of operation shall be prominently displayed at each facility.	B	1-day Notice
52	<b>Check-In/Out</b> - The Marina Lessee shall complete transient check-in/out in a friendly and professional manner. The slip rental staff shall confirm slip type and length, duration of stay, departure date and check-out time, and method of payment. Slip rental staff shall also identify any extra charges (utility add-ons, donations to groups, and associations, etc.). Comment cards or the concessioner's comments website shall include in the check-out material.	B	
53	<b>City Orientation Material</b> - City-specific materials are available (brochures, maps, newsletters, and special notices). Additional information shall be available about the area (local businesses, places of interest by land and by boat, major highways, airports, restaurants, etc.).	C	7-day Notice
	<b>Other Services</b>		
54	<b>Lost and Found</b> - The Marina Lessee shall log, and secure Items found in a designated location. Records shall be maintained, and procedures established to ensure prompt, accurate responses to visitor inquiries.	C	7-day Notice
	<b>Outside Contractor Requirements</b>		

55	<b>Allowable Activities</b> - The Marina Lessee shall ensure that only qualified contractors perform vessel maintenance. Significant vessel maintenance shall occur outside the Marina.	A	\$500 per day
56	<b>Qualifications and Credentials</b> - The Marina Lessee shall maintain an approved list of qualified contractors. Marina office files on qualified contractors shall include a certificate of insurance naming the City as an additional insured.	C	7-day Notice

	<b>Marina Safety</b>		
57	<b>Marine Radio</b> - The Marina Lessee shall equip the Marina with licensed VHF marine radio, with back up available. Staff shall be trained in radio use and communication protocols and carry Operational VHF marine radio units.	A	\$500 per day for any deficiency for up to 7 days, \$2,000 per day thereafter
58	<b>Emergency Frequency and Protocol</b> - The Marina Lessee shall maintain a port operations frequency with a specific transmission channel and call sign.	A	
59	<b>Incident Reporting</b> - The Marina Lessee shall complete and maintain incident report records. Major incidents shall be immediately reported to the City.	B	1-day notice
60	<b>After Dark Procedures</b> – The Marina Lessee shall provide after hours in-person security. Staff completes security rounds by walking all docks and support facilities. A security log shall note suspicious activities. Staff shall check that gates, storage areas, and fuel areas are secure and/or locked. The marina shall be patrolled 24/7.	B	
	<b>Personnel</b>		
61	<b>Staffing Levels</b> - The Marina Lessee shall Sufficiently staff facilities and services to provide adequate service.	A	\$100 per day for up to 7 days, \$1,000 per day thereafter
62	<b>Employee Attitude</b> - The Marina Lessee shall ensure employees project a friendly and helpful attitude and are capable and willing to answer customer questions (about both job and general City information).	C	5-day notice
63	<b>Employee Appearance</b> - The Marina Lessee shall have employees wear apparel and employees interfacing with the public shall wear a name tag identifying them as concession staff. Employees shall present a Neat and Clean appearance.	C	
64	<b>Management Availability</b> - The Marina Lessee shall have marina facilities general manager or manager on duty during business hours and reasonably available outside of business hours. The marina general manager shall possess a strong background in the marina industry. Other certifications (Marina Operator, Marina Manager) shall be maintained, as required.	B	
65	<b>Employee Training Programs</b> - The Marina Lessee shall implement an active training program for employees in the development of necessary skills and procedures. Training shall emphasize work	B	30-day Notice

	performance and, as Appropriate to the position, cover requirements such as technical training, emergency response, cleanliness, employee attitude, and Marina Standards. Training shall be documented.		
	<b>Rates</b>		
66	<b>Approved Rates</b> - Rates and other customer charges shall comply with the Lease.	A	\$100 per incorrect charge for up to 7 days, \$1,000 per incorrect charge thereafter

## Attachment 1

### CLEANLINESS INDEX

The Public Area Cleanliness Index must be a defined set of ratings that can effectively provide an objective measurement on the cleanliness of the city.

The proposed cleanliness index is based on a 6 point scale that rates four factors that directly affect the cleanliness of the public area. The four factors are Trash/Litter, Litter/Garbage Cans, Organic Materials, and Fecal Matter. The tables beginning on the next page contains the proposed cleanliness index.

### CLEANLINESS INDEX

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<b>1</b> <b>Extremely Clean</b>	<ul style="list-style-type: none"> <li>No litter and/or debris on entire block face.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Isolated instances of small fresh organic material, such as leaves, branches, etc., cover the <u>paved</u> area.</li> <li>No large organic material, such as tree limbs or palm fronds on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Fecal matter is not visible.</li> </ul>
<b>2</b> <b>Clean</b>	<ul style="list-style-type: none"> <li>Isolated pieces of litter on the entire assessed area. The area is not void of litter, but may contain an isolated incidence of litter.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full. There is isolated piece of trash outside of the can.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Less than 10% of a 10 step distance <u>paved</u> area is covered by small organic materials, but occurring no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>No large organic material on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Past residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter. In a 10 step distance the litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> <li>• Can is functioning, but is full with trash, which can be seen from the eye level. There is no litter above the rain guard. There is some residue from past garbage.</li> <li>• Can is in a clean condition, but may have one small isolated instance of a sticker or graffiti, which the eye is not drawn to it.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic materials is on the ground.</li> <li>• Isolated case of organic material accumulation caused by standing water and poor drainage.</li> </ul>	<ul style="list-style-type: none"> <li>• One instance of fecal matter is present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>4</b> <b>Somewhat Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistently scattered trash. In a 10 step distance the trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard. In some cases, there is evidence that there is improper use by the residents.</li> <li>• Can is in a working condition, but contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic materials is on the ground.</li> <li>• 2 to 3 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• The organic material is beginning to turn brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Two instances of fecal matter are present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>5</b> <b>Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash. In a 10 step distance there are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> </ul>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard and beginning to overflow since there is no room to put additional trash. There may be evidence of improper use by the residents.</li> <li>• Can has some damage, but is usable.</li> <li>• A large area of the can contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Over 10 pieces of large organic materials is on the ground.</li> <li>• 3-4 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Faint foul odor is present due to standing water.</li> <li>• The organic material has been on the ground for some time and has turned brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Three instances of fecal matter are present on the public area.</li> </ul>
<p style="text-align: center;"><b>6</b> <b>Extremely Dirty</b></p>	<p>Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street.</p> <p><i>Guideline:</i> This area has been neglected for a long time and needs help. Heavy equipment will be required to clean this area. The area may also be affected due to other circumstances (i.e. nearby constructions sites, homeless activity, etc.)</p>	<ul style="list-style-type: none"> <li>• Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation.</li> <li>• Can is damaged and needs to be replaced.</li> <li>• Can is covered of items such as stickers or graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of a 10 step <u>paved</u> area is covered with organic material. The organic material has been on the ground for some time and has turned brown.</li> <li>• Over 5 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Strong foul odor is present due to standing water.</li> </ul>	<ul style="list-style-type: none"> <li>• Four or more instances of fecal matter are present on the public area.</li> </ul>



## CLEANLINESS INDEX FOR WATERWAYS

A	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>1</b> <b>Extremely Clean</b></p>	<ul style="list-style-type: none"> <li>• No litter and/or debris floating on or in the water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.               <ul style="list-style-type: none"> <li>• No smell is being emitted.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No or isolated instances of small fresh organic material.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>2</b> <b>Clean</b></p>	<ul style="list-style-type: none"> <li>• Isolated pieces of litter floating on or in the entire area of water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.               <ul style="list-style-type: none"> <li>• No smell is being emitted.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Less than 10% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small amount of litter including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. More than two pieces of litter and less than 5% of about a 20 sq. foot area of water up to the high tide watermark are covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.               <ul style="list-style-type: none"> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> </ul> </li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.               <ul style="list-style-type: none"> <li>• No smell is being emitted.</li> </ul> </li> </ul> <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

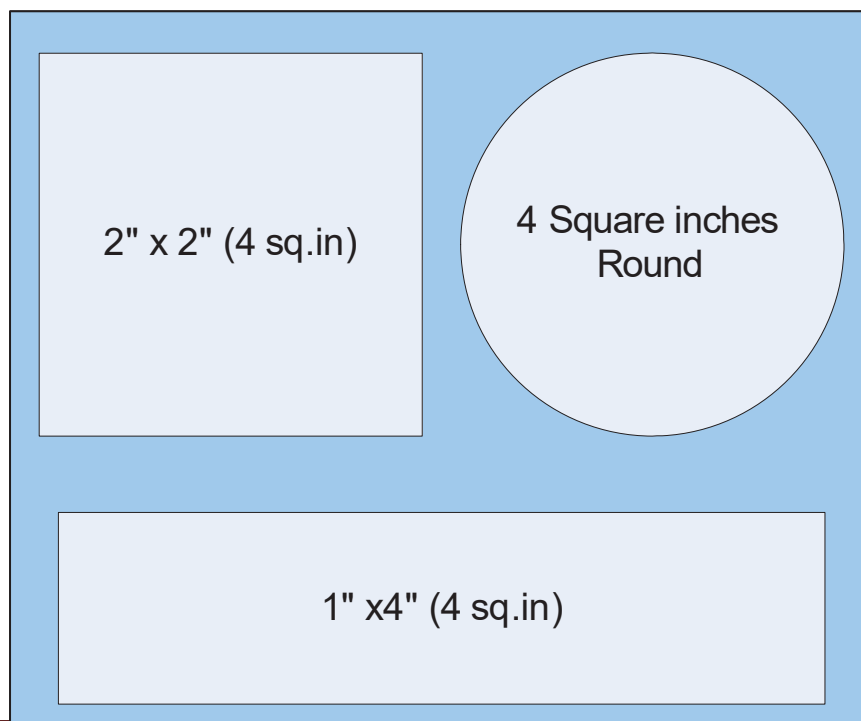
A	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>4 Somewhat Dirty</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter, including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 5% and 10% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area being assessed.               <ul style="list-style-type: none"> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> </ul> </li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• Slight unnatural or foul smell is being emitted.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water up to the high tide watermark, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>5 Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 10% and 25% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.               <ul style="list-style-type: none"> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> </ul> </li> <li>• One extra-large piece of litter, such as a tire, a grocery cart, etc.</li> <li>• Strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of about a 20 sq. foot area of water and up to the high tide watermark are covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Over 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

A	Litter / Trash	Organic Materials
<b>6 Extremely Dirty</b>	<ul style="list-style-type: none"> <li>• Large accumulation of litter and trash including floating liquids, such as oil. Over 25% of about a 20 sq. foot area of water area up to the high tide watermark are covered by litter. This includes litter floating on the water or in the water and up to the high tide watermark. There may be evidence of illegal dumping.</li> <li>• Two or more extra-large pieces of litter, such as tires, a grocery carts, etc.</li> <li>• Very strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of the water and up to the high tide watermark is covered by organic material.</li> </ul>

The cleanliness index makes references to small and large litter, which can directly affect the cleanliness score of a public area. The definition used to distinguish the difference between small and large litter came from the Florida Center for Solid and Hazardous Waste Management (the Center). Each year the Center conducts a roadside litter survey for the State of Florida and is funded through the Florida Department of Environmental Protection (FDEP). Starting in 1993, the Florida Legislature designated the Center and funded the litter survey to measure progress toward the state’s litter reduction goal as defined in the Solid Waste Management Act.

Using the Center’s definition for litter, items or pieces of items four square inches or larger in size are classified as “large litter,” and items or pieces of items under four square inches are classified as “small litter.” As a reference, the figure below contains three templates of 4 square inch areas in a rectangle, square, and round shape are depicted in the figure below. If the litter fits in any of these areas, then it is considered small litter. If the litter is too big to fit in any of these areas, then it is considered large litter.

The two tables following the templates contain examples of small versus large litter or trash.



## Templates for Small Litter Distinctions

Examples of Small Litter: Cigarette butts, Bottle caps, Straws, Candy packaging and wrappers, Polyfoam packing materials, Plastic espresso coffee cups

Examples of Large Litter: Beer cans, Beer bottles, Soft drink (glass), Soft drink (cans), Soft drink (plastic), Sport drink (glass), Sport drink (plastic), Wine / Liquor (glass), Wine / Liquor (plastic/other), Milk / Juice (Plastic), Milk / Juice (Glass), Six pack plastic rings, Plastic drink cups, Paper Cups (Hot), Paper Cups (Cold), Polystyrene cups (foam), Cup lids, Plastic retail bags, Paper retail bags, Paper bags – fast food, Plastic bags – not retail, Paper bags – not retail. Zipper bags / sandwich bags, Cardboard boxes, Paperboard (cereal type), Paper beverage cases, Plastic jars / bottles/ lids, Glass jars / bottles misc., Cans – steel, Cans – aluminum, Aerosol cans, Paper food wrap, Utensils, Napkins, Paper fast food plates, Poly fast food plates, Clothing, Printed materials (newspapers, flyers, books, etc.)

---

## **Attachment 2**

### **Public Area Appearance Index For Exterior Greenspace, Baywalk and Access Areas – Scale 1-6**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Appearance Index factors being assessed are Sidewalks, Roadways, Turf, and Plant Beds.

#### Sidewalks

- Smooth and even with no cracked or broken panels/ bricks
- Curb damage free
- Painted areas fully covered (Curbs)
- No graffiti or advertisements
- Sidewalk furniture excellent condition (benches (wood/concrete/steel), bike racks, water fountains, gate/latches, handrails, bollards)

#### Roadways Paved Areas

- Asphalt smooth
- No cracks, holes, or patches
- Pavement markings crisp and visible
- Crosswalks clearly identified
- Signage/poles/mast arms in excellent condition with no unused/unnecessary poles, etc.

#### Turf

- Cut & Trim
- Green
- No weeds
- No overgrowth
- No open holes or bare patches

#### Plant Beds

- Fully planted
- Fully mulched
- No weeds
- No encroachment
- Healthy appearance and damage free

### **Attachment 3 Parking Garage Index**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Criteria for each area are listed below

Parking Garage Index factors being assessed are Cleanliness, Parking Appearance, and Exterior Appearance

#### Cleanliness Parking Area / Stairwells/ Elevators

- No trash on ground
- No graffiti on walls
- Odor Free
- Garbage Cans Well-maintained
- No organic material (vomit/sand/cobwebs)

#### Appearance Parking Area / Stairwells / Elevators

- Signage Well-maintained
- Lighting Sufficient and all fixtures working
- No damage (leaks/rust/concrete spalling) and painted areas crisp
- Pavement stain free
- Ticket burster/payment station/exit verifier in good working condition or stairwell doors/railings or elevator doors/buttons

#### Appearance / Cleanliness Exterior

- Planters/grassy areas/sidewalk entrance well maintained
- Graffiti free
- No unpleasant odor
- No trash
- Signage clean and useable

**Attachment 4**  
**RESTROOM INDEX**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Criteria for each area are listed below

Restroom Index factors being assessed are Toilet Areas, Appearance Sink Area, Appearance Interior, and Exterior Appearance

**Cleanliness Toilet Area**

- Floors mopped/clean/no stains
- Toilets/urinal clean/no litter visible/ no leaks
- No unpleasant odor
- Toilet paper unavailable/usables
- No graffiti

**Cleanliness Sink Area**

- Floors mopped/clean/no stains
- Sink and/or mirror clean/no leaks
- Trash can no more than  $\frac{3}{4}$  full
- Walls clean/no graffiti
- Soap dispenser clean

**Appearance Interior**

- Stable/operable toilet/urinal partition enclosures
- Stall doors rust free/fully painted/latch and hinge functional
- Sink faucets and soap dispenser functional
- Hand dryer or paper dispenser functional
- All interior lights functional

**Appearance / Cleanliness Exterior**

- Signage visible and clean
- No graffiti
- No unpleasant odor
- No trash/litter
- Entrance door rust free/fully painted/functional (rollup or traditional)

**EXHIBIT “F”  
Form of Recognition Agreement**

**FORM OF RECOGNITION AGREEMENT**

This instrument prepared by or under the supervision of  
(and after recording should be returned to):

Laura Gangemi Vignola, Esq.  
Gangemi Law Group, PLLC  
3310 Mary Street, Suite 303  
Miami, FL 33133

(Space reserved for Clerk of Court)

**RECOGNITION AGREEMENT**

**THIS RECOGNITION AGREEMENT** (this “**Agreement**”) is made and effective as of \_\_\_\_\_, 2021 [insert date of closing under the air parcel PSA], by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation (the “**City**”), **MARINA PARK COMMERCIAL, LLC**, a Delaware limited liability company (the “**Master Sublessee**”) and **MB MARINA PARK, LLC**, a Delaware limited liability company (the “**Marina Lessee**”; collectively with the City and Master Sublessee, the “**Parties**,” and each, a “**Party**”).

**RECITALS**

**WHEREAS**, the City, as lessor, and MB Marina Park, LLC, a Delaware limited liability company, as lessee (the “**Marina Lessee**”), are simultaneously herewith entering into that certain Ground Lease Agreement (the “**Marina Lease**”), which shall be effective on January 1, 2022, pursuant to which the City shall be leasing to Marina Lessee the real property and improvements thereon legally described on Exhibit “A” attached hereto and by this reference made a part hereof (the “**Property**”);

**WHEREAS**, Marina Lessee, as sublessor, and Master Sublessee, as sublessee, are simultaneously herewith entering into that certain Master Sublease (the “**Master Sublease**”), which shall be effective on March 15, 2021, for a term commencing on the date set forth in the



Master Sublease, pursuant to which Marina Lessee shall be subleasing to Master Sublessee the portion of the Property legally described on Exhibit “B” attached hereto and by this reference made a part hereof (the “**Subleased Property**”);

**WHEREAS**, Master Sublessee, together with its affiliate, Marina Park Residential, LLC, a Delaware limited liability company, as “developer,” and the City have entered into that certain Development Agreement recorded on \_\_\_\_\_, 2020 in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of Miami-Dade County, Florida (the “**Development Agreement**”); and

**WHEREAS**, the Parties are entering into this Agreement pursuant to the requirements of the Marina Lease.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. **Recitals; Definitions.** The foregoing Recitals are true and correct and are hereby incorporated by reference. Capitalized terms not defined in this Agreement shall have the meanings ascribed such terms in the Marina Lease.

2. **Recognition, Non-Disturbance and Attornment.** In the event of a termination of the Marina Lease for any reason: (a) the Master Sublessee will not be disturbed and will be allowed to continue peacefully in possession of the Subleased Property with full enjoyment of all rights under the terms and conditions of the Master Sublease; (b) the Master Sublease and each of its terms and provisions, including, without limitation, all lender protection provisions, shall not be affected or terminated and shall continue automatically for the duration of the term of the Master Sublease and all extensions thereof with the Master Sublease continuing as a direct lease between the City and the Master Sublessee with the same force and effect as if the City had originally entered into the Master Sublease as “lessor” thereunder; (c) the City and Master Sublessee shall recognize one another as lessor and lessee, respectively, under the Master Sublease, and shall be bound to one another under all of the terms, covenants and conditions of the Master Sublease, and Master Sublessee shall attorn to the City as Master Sublessee’s lessor under the Master Sublease; and (d) upon written request from a Party, but at the sole cost and expense of Master Sublessee, the Parties shall enter into a new lease agreement for the remainder of the original term of the Master Sublease upon the same terms and conditions as the Master Sublease (a “**New Lease**”). All references in this Agreement to the Master Sublease shall include any such New Lease.

3. **No Default.** This Agreement shall not be conditioned upon Master Sublessee not being in default under the Master Sublease, but, subject to the terms of the Master Sublease, the City shall have all rights and remedies of the “lessor” under the Master Sublease if Master Sublessee is in default under the Master Sublease, provided that nothing herein shall be construed as a waiver of Marina Lessee’s rights and remedies under the Master Sublease in the event of default by the Master Sublessee. City shall not seek to terminate, extinguish, abrogate, or otherwise modify the Master Sublease in any action or proceeding to terminate the Marina Lease unless required to protect the City’s rights in connection with any proceeding to terminate the

Marina Lease, in which case City and Master Sublessee shall enter into a New Lease not later than any date on which the Master Sublease is terminated, which New Lease shall be effective immediately and simultaneously upon any such termination of the Master Sublease. Notwithstanding the foregoing, the City shall have the right to terminate this Agreement and/or seek to terminate or extinguish the Master Sublease in connection with an action or proceeding to terminate the Marina Lease upon written notice to Master Sublessee during the continuance of any Material Event of Default (as such term is defined in the Development Agreement) provided that (a) all notice, grace and cure periods under the Development Agreement that are applicable to Protected Lenders have expired without cure by such Protected Lenders of such Material Event of Default and (b) no Protected Lender has exercised its rights to a new master sublease pursuant to the terms of the Marina Lease (or corresponding provisions of the Master Sublease) or to a new development agreement pursuant to the terms of the Development Agreement.

4. **Adjustment to Legal Descriptions.** The Parties acknowledge that the legal descriptions of the Property and the Subleased Property are subject to revision based upon final design review approval by the City's Design Review Board and conditional use approval by the City's Planning Board with respect to the project contemplated under the Development Agreement (collectively, the "**Project Approvals**"), and based upon the final, as-built structures. The Parties shall reasonably cooperate with one another from time to time, upon any Party's request and at Master Sublessee's expense, to correct such legal descriptions to conform to Project Approvals and to conform to the final, as-built structures. Such cooperation shall include, without limitation, execution and delivery by each Party to the other of amendments to this Agreement to conform such legal descriptions to the Project Approvals and to the final, as-built structures. Additionally, the City agrees to execute amendments to the Marina Lease as and when required pursuant to the terms of Section 2.1 of the Marina Lease.

5. **No Amendments.** The City and Marina Lessee shall not materially amend, modify, supplement or restate, or permit any amendment, modification, supplementation or restatement that materially affects Marina Lessee's rights and obligations under the Marina Lease with respect to the Subleased Property without the written approval of Master Sublessee in its sole and absolute discretion so long as the Master Sublease remains in effect. Marina Lessee and Master Sublessee shall not materially amend, modify, supplement or restate, or permit any amendment, modification, supplementation or restatement of the Master Sublease affecting Marina Lessee's and Master Sublessee's rights and obligations as set forth in this Agreement or in the Marina Lease without the written approval of the City Manager in its sole and absolute discretion.

6. **Lender Protections.** Each Protected Lender shall be deemed a third-party beneficiary of this Agreement. If any Protected Lender exercises its rights to a new master sublease pursuant to the terms of the Marina Lease (or corresponding provisions of the Master Sublease), then all references in this Agreement to the Master Sublease shall include any such new master sublease and all references to the Master Sublessee or a "Party" shall include any such Protected Lender that has exercised such rights. If any Protected Lender exercises its rights to a new development agreement pursuant to the terms of the Development Agreement, then all references in this Agreement to the Development Agreement shall include any such development agreement.

7. **Further Assurances.** Although the provisions of this Agreement shall be self-operative and shall be effective immediately and concurrently with the termination of the Marina Lease for any reason, each Party agrees to execute and deliver to the other Parties such other commercially reasonable instrument or instruments as the requesting Party shall from time to time request in order to confirm the provisions of this Agreement.

8. **Miscellaneous.**

(i) **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Agreement 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 any joint venture between or among any of the City, Marina Lessee or Master Sublessee, or as constituting any one Party as the agent or representative of any other Party for any purpose or in any manner whatsoever.

(ii) **Recording.** This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida at Master Sublessee's sole cost and expense.

(iii) **Florida Laws Prevail.** This Agreement shall be governed by the laws of the State of Florida. If any term, covenant, or condition of this Agreement or the application thereof to a Party 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 Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law. In any legal action brought by a Party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and paralegals' fees and costs, including those incurred in subsequent actions to enforce an arbitration award, bankruptcy awards and orders, and those incurred on appeal.

(iv) **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 Agreement, nor shall any such member, official, representative or employee participate in any decision relating to this Agreement 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 Master Sublessee 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 Master Sublessee or successor or on any obligations under the terms of this Agreement.

(v) **Notice.** A notice or communication, under this Agreement by any one Party to any other Party 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) Master Sublessee. In the case of a notice or communication to Master Sublessee if addressed as follows:

To:

Marina Park Commercial, LLC  
3310 Mary Street  
Suite 302  
Coconut Grove, Florida 33133  
Attention: David P. Martin and Ellen Buckley

With Copies To:

Gangemi Law Group, PLLC  
3310 Mary Street  
Suite 303  
Miami, Florida 33133  
Attention: Laura Gangemi Vignola, Esq.

(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, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

With Copies To:

City Attorney  
City of Miami Beach, Florida  
1700 Convention Center Drive, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

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

To:

MB Marina Park, LLC  
17330 Preston Road, Suite 220A  
Dallas, Texas 75252

Attention: Bryan C. Redmond

With Copies To:

MB Marina Park, LLC  
300 Alton Road, Suite 208  
Miami Beach, Florida 33139  
Attention: General Manager

And

Powell Coleman & Arnold  
8080 North Central Expressway, Suite 1380  
Dallas, Texas 75206  
Attention: Brian DeVoss

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.

(vi) Estoppel Certificates. Each Party shall, within thirty (30) days after written request by any other Party, execute, acknowledge and deliver to the Party which has requested the same or to any actual or prospective Protected Lender, purchaser of the Master Sublessee's interest in the Subleased Property or any part thereof, purchaser of Master Sublessee's leasehold interests under the Master Sublease or purchaser of any direct or indirect equity interest in Master Sublessee (in each case to the extent such third party is a transferee pursuant to a Permitted Transfer under the Development Agreement), a certificate stating that:

- a. this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, this Agreement is in full force and effect as modified, identifying such modification agreement, and if this Agreement is not in force and effect, the certificate shall so state;
- b. this Agreement 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. to the knowledge of the certifying Party any and all conditions under this Agreement to be performed up to that date by any other Parties hereto, 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 certifying Party, has against the enforcement of this Agreement by any 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
- d. as to any other matters of fact reasonably requested by requesting Party and reasonably related to this Agreement, the Marina Lease, the Master Sublease, or the New Lease.

The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate the certifying Party (nor any individual signing such certificate on such Party's behalf) shall not 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 certifying Party pursuant to this paragraph shall be deemed to have been made by such certifying Party and not by the person signing same.

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

- a. transferring the Property or any part thereof from Marina Lessee (or its permitted successors or assigns) to the City (or its permitted successors or assigns);
- b. transferring title to the Property or any part thereof from the City (or its permitted successors or assigns) to Marina Lessee (or its permitted successors or assigns);
- c. transferring title to the Subleased Property or any part thereof from the City (or its permitted successors or assigns) to Master Sublessee (or its permitted successors or assigns).

Any such deed or instrument of conveyance shall not be deemed to affect or impair the provisions and covenants of this Agreement.

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

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

(x) Successors and Assigns; No Third Party Beneficiaries. All of the covenants conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Parties. The Parties acknowledge and agree that except for Protected Lenders, if any, each of which shall have the rights set forth in the Marina Lease and the Master Sublease (which rights under the Master Sublease shall confirm in all respects the rights of the Protected Lenders under the Marina Lease with respect to the Subleased Property) and shall be deemed a third-party beneficiary of this Agreement, 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 Agreement, in the event of any assignment of this Agreement by the City, including if all or any portion of the interest of the City in the Subleased Property or this Agreement 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 the Marina Lease.

(xi) Entire Agreement. This Agreement and its Exhibits and Schedules, the Marina Lease, the Master Sublease, the Purchase Agreement and the Development Agreement constitute the sole and only agreement of the Parties hereto with respect to the subject matter hereof and thereof 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 Agreement, the Marina Lease, the Master Sublease, or the Development Agreement are of no force or effect and are merged into this Agreement.

(xii) Amendments. No amendments to this Agreement shall be binding on the Parties unless in writing and signed by the Parties. 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 Agreement. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Master Sublessee, or otherwise connected with any action requested by or for the benefit of Master Sublessee under this Agreement, and shall be reimbursed by Master Sublessee for all reasonable out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Master Sublessee shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

(xiii) Non-Subordination of City's Interest. The City's fee interest in and ownership of the Subleased Property shall not be subject or subordinate to or encumbered by any financing for the Subleased Property or lien or encumbrances affecting Master Sublessee's interest in the Subleased Property or by any acts or omissions of Master Sublessee or the Master Sublessee or Space Lessees under the Master Sublease. The City represents and warrants to Master Sublessee that as of the date of this Agreement Lease no mortgages, security agreements, or similar liens or encumbrances currently exist against the City's interest in the Subleased Property. The City acknowledges that this Agreement shall not be subordinate to any future mortgage against the City's interest in the Subleased Property. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of the City in the Subleased Property or this Agreement 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, (a) this Agreement and the rights of Master Sublessee hereunder shall continue in full force and effect and shall not be terminated or disturbed and (b) the Master Sublease and the rights of Master Sublessee thereunder shall continue in full force and effect and shall not be terminated or disturbed.

(xiv) City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Agreement, including any approval contemplated under this Agreement (within the timeframe

specified therefor as if the approval was being determined by the City Manager), any proposed amendment or modification to this Agreement or any separate agreement relating to the Subleased Property or otherwise referenced in this Agreement.

(xv) Holidays. It is hereby agreed that whenever a notice or performance under the terms of this Agreement 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.

(xvi) No Brokers. Master Sublessee 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 Master Sublessee and which is entitled to a commission as a result of the execution and delivery of this Agreement. The City similarly shall be responsible for, and shall hold Master Sublessee 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 Agreement.

(xvii) Master Sublessee Entity. On the date of execution hereof, Master Sublessee is a limited liability company. In the event that at any time, Master Sublessee 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 Master Sublessee entity.

(xviii) Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

(xix) Waiver of Consequential Damages. Notwithstanding anything contained in this Agreement to the contrary, in no event shall a Party be liable to another Party for any consequential, exemplary or punitive damages.

(xx) Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any Party to this Agreement under applicable laws and each Party hereto reserves any and all of such rights.

[SIGNATURES ON FOLLOWING PAGES]



IN WITNESS WHEREOF, Master Sublessee has caused this Agreement to be signed in its name, and the City of Miami Beach has caused this Agreement 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, by means of [ ] physical presence or [ ] online notarization, this \_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

**MASTER SUBLESSEE:**

Signed, sealed and delivered  
in the presence of

**MARINA PARK COMMERCIAL, LLC, a  
Delaware limited liability company**

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_ day of \_\_\_\_\_, 202\_, by **MARINA PARK COMMERCIAL, LLC**, a Delaware limited liability company, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**MB MARINA PARK, LLC, a Delaware  
limited liability company**

Signed, sealed and delivered  
in the presence of

\_\_\_\_\_  
Print Name:

By:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Print Name:

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me, by means of [ ] physical presence or [ ] online notarization, this \_\_\_ day of \_\_\_\_\_, 202\_, by **MB MARINA PARK, LLC**, a Delaware limited liability company, as \_\_\_\_\_ of \_\_\_\_\_ Who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**EXHIBIT “G”**  
**Marina Improvements**

1. Access Control for Parking Garages, which shall be completed within the first twenty-four (24) months of the Term
2. Replacement of existing underground fuel storage tanks, fuel lines and supporting infrastructure, which shall be completed within the first ten (10) years of the Term as such time may be extended to permit coordination with the construction of the Replacement Facilities or Alternate Replacement Facilities
3. Alton Road Improvements
4. Baywalk Improvements (cost of these improvements may count towards Marina Improvements Cost or cost of Alternate Replacement Facilities, at Lessee’s sole election)
5. New Lighting
6. New Electrical including, but not limited to: transformers, distribution panels, substations, wiring, conduit, power pedestals, metering equipment, lighting pedestals, circuit breakers, disconnect switches and power outlets.
7. New Plumbing and Other Utility Upgrades
8. New Fire Suppression including but not limited to: riser room equipment, riser valves, monitoring panel & equipment, stand pipe components, hose reels, hose cabinets, hose nozzles, portable fire suppression carts and fire extinguisher cabinets.
9. New Boat Lifts/Boat Lift Enhancements
10. Garage Enhancements
11. Dock Amenities (i.e. WIFI, technology, amenities)
12. New Docks, Dock Structures, Ramps and Dock Components\* including, but not limited to: improvements to any structures currently located on docks, floating docks, fixed docks, pilings, anchors, flotation, pontoons, decking, whalers, tie rods, dock frames, banding boards, fendering materials, cleats, piling guides, gangways, bridges, walkways, bollards, moorings, life ring stations, re-boarding ladders and signage.
13. Dredging including, but not limited to: dredge material removal, dredge material disposal, containment and sea grass mitigation.
14. Breakwater/Wave Attenuator
15. Bathroom or Laundry Room Improvements (i.e. located in Replacement Facilities/Alternate Replacement Facilities/Murano/Yacht Club)
16. New Drainage or Resiliency
17. Landscaping
18. Any Life/Safety Items
19. Any cosmetic or aesthetic improvements incident to redeveloping a marina.
20. Any improvements or TI to Commercial Space in the Icon.
21. Boat Lift Equipment, including, but not limited to: cradles, electric/hydraulic motors, cables, control panels, switch gear, pilings, floats, tanks and mounting brackets.
22. Sewer& Water including, but not limited to: supply & distribution lines, meters, back flow preventers, pressure reducing valves, lift station, lift station pumps, lift station control panel, lift station floats, marine pump-out, pump out sumps, pump out hoses, pump out pump and mobile pump out cart.

23. Bulkhead/Breakwater including, but not limited to: wall pile/sheet pile, pilings, center match, filter cloth, top cap, tie rods, deadmen, drainage culvert/pipes, back fill material, anchors, flotation, pontoons, decking, whalers, and storm water outfall.
24. Fuel Equipment including, but not limited to, fuel tank farm pit, fuel tanks, fill ports, vents, sumps, pumps, electronic control & monitoring equipment, cathodic protection, dispensers, conduit, high & low voltage control wiring, sheer valves, control panels, hose reels, hoses and dispenser nozzles.
25. Soft costs including, but not limited to: engineering, permitting, wave attenuation study, bathometric charts, seagrass study, permitting, feasibility study, economic impact study and manatee protection plan expenses.
26. Enhancements to the gates, wayfinding and ancillary marina furniture (i.e. boat boxes, trash receptacles, fire extinguisher enclosures)

**EXHIBIT “H”**  
**Intentionally Deleted**

**EXHIBIT "I"**  
**Marina Standard**

**[see attached]**

# CITY OF MIAMI BEACH

## MARINA STANDARDS (AREA 2) AND

### FINES IN LIEU OF DEFAULT

Defined terms shall be the same as provided in that certain Ground Lease Agreement (the "**Lease**") as of even date herewith by and between THE CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation (the "**City**") and MB MARINA PARK, LLC, a Delaware limited liability company, (the "**Marina Lessee**") except as specifically provided otherwise herein. The following definitions apply to these terms throughout the standards:

- Adequate: As much as necessary for the intended duration of use
- Appropriate: Suitable to the level of service or as specified in the operating plan
- Clean: Free from dirt, marks, stains, or unwanted matter consistent with City of Miami Beach Cleanliness Standards exceeding a score of 2 (Attachment 1)
- Neat: Arranged in an orderly, tidy manner
- Operational: In use or ready for use
- Sufficient: Enough for the number of persons
- Well-maintained: Kept in good order or condition

Standards are ranked and penalties assessed in the in the following manner:

RANKING	DESCRIPTION	Fine
A	<b>Major:</b> Priority conditions or practices create or have the potential to exert a <b>significant</b> impairment to resident, visitor or employee health and safety, City resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	Immediate Fine shown with each A ranked standard below unless expressly stated otherwise in the specific designated category.
B	<b>Moderate:</b> Second Priority conditions or practices create or have the potential to exert a <b>moderate</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per day upon expiration of Written Notice to Cure.
C	<b>Minor:</b> Third Priority conditions or practices create or have a potential to exert a <b>minor</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per week upon expiration of Written Notice to Cure.



For avoidance of doubt, where the term “World Class” is used herein it shall be deemed complied with as long as the Marina Lessee is in compliance with the specific criteria for maintenance and operations set forth in this Exhibit. Standards shall be updated to reflect consultant recommendations for a World Class Marina, as provided in the Lease.

Penalties shall be adjusted for the Consumer Price Index changes on each 10-year anniversary of the lease.

To the extent the items below are not currently provided by the Marina Lessee, but are required to be provided in accordance with the terms of the Lease, the Marina Standard’s shall not apply until such time that the item is required to be installed or performed in accordance with the terms and conditions of the Lease.

If the Marina Lessee fails to comply with any maintenance or operational standard set forth below then the City may elect to issue an infraction fine by delivering written notice to the Marina Lessee (each notice to be referred to as an “**Infraction Notice**”). An Infraction Notice shall be effectively delivered if sent by e-mail to [mbminfo@suntex.com](mailto:mbminfo@suntex.com) and subsequently sent by overnight mail on the following business day to the Marina Lessee in accordance with the notice requirements set forth in the Lease or hand delivered to the Marina Lessee to the front office or to the Marina Manager. Additionally, on a calendar quarterly basis, the City shall deliver the Marina Lessee a written notice containing an invoice for all fines incurred during the previous calendar quarter that remain unpaid as set forth herein and such fines shall become due and payable as Base Rent within thirty (30) days of the receipt by the Marina Lessee of the quarterly fine notice. If the fines are not paid then the City shall send a final notice pursuant to the Default Notice Procedure and ten days after receipt of such final notice, if the fines have not been paid, then the City may treat the failure as a breach entitling the City to exercise its remedies in Article XX of the Lease. Marina Lessee may elect to contest the infractions or fines received within a respective quarter in accordance with Article 20.13 in the event the quarterly fines exceeds a monetary threshold of \$15,000.

“**Fine Notice Procedure**” means delivery of a notice to pay fines, to all Lessee notice parties, via hand delivery or overnight delivery with a copy via email, with a legend in bold and all caps at the top of the notice that states the following: THIS IS A NOTICE OF FAILURE TO PAY FINES AS REQUIRED PER THE LEASE. The notice shall set forth the amount of the fines, the infraction that the fines relate to and the date by which such fines must be paid.

Anything to the contrary notwithstanding in the Standards set forth below, except for infractions that jeopardize the public health, safety or welfare, if the Infraction is such that it cannot reasonably be constructed or completed within the stated notice period, due to required construction, product lead times, or regulatory requirements (i.e building permits), Marina Lessee shall not be subject to fine as long as the Marina Lessee is diligently pursuing completion of the correction in an expeditious manner after receipt of the in accordance with the Notice Infraction.

Standard Number	<b>MARINA FACILITY STANDARDS AREA 2</b>	A, B, C Ranking	Fines/ Cure Periods
	<b>Area 2</b>		
1	<p><b>Marina Facilities</b> - The Marina Lessee shall maintain Marina facilities to a world class standard to ensure that the original quality is maintained and protect against deterioration. Roofs, gutters, and downspouts shall be Well-maintained and clear of obstructions. Rooftop ventilation electrical, plumbing and other systems shall be Well-maintained and Operational.</p> <p>The Marina Lessee shall maintain marina facilities in Areas 2 to a world class standard to ensure that there is no deferred and a maintenance plan and renewal and replacement projects are completed in scheduled timeframes The Marina Lessee and the City shall inspect the physical structure of the office, retail and Area 2 Marina Facilities every five (5) years , at the expense of the Marina Lessee, and using a contractor acceptable to both Tenant &amp; Landlord, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the next five (5) years.</p>	A	<p>Failure to maintain facilities resulting in deferred maintenance identified in facility inspection: 20 percent of deferred maintenance costs per year and each additional year thereafter.</p> <p>Failure to complete scheduled renewal and replacement projects: 10 percent of scheduled renewal and replacement projects per year and each additional year thereafter.</p>
2	<p><b>Area 2 Cleanliness</b> - The Marina Lessee shall maintain all Area 2, including, rights-of-way, access areas, and waterways contained within Area 2 in good, Clean healthful and safe order with Well-maintained furnishings, so as to ensure a Cleanliness Index exceeding a score of 2, as provided in Attachment 1 and Attachment 2.</p>	A	<p>Failure to properly remove debris, litter or garbage, or otherwise satisfy the Cleanliness Index as provided in Attachment 1 and Attachment 2, as required herein: \$250 per 1st violation each year and, following 48 hour notice \$1,000 thereafter;</p>
3	<p><b>Trash/Recycling</b> - The Marina Lessee shall provide Sufficient, conveniently located trash containers. Refuse shall be stored in covered, waterproof receptacles. Market available recyclable products shall be collected and recycled. The Marina Lessee shall maintain central refuse collection sites shall be Sufficient garbage</p>	A	<p>\$100 per violation of open central collection sites</p>

	collection areas so that garbage is not overflowing and enclosed with enclosures closed at all times unless refuse is being actively transferred to or from the container.			
4	<b>Boat Lifts</b> – The Marina Lessee shall provide training for employees on boat lift operating procedures. Boat lifts shall be Operational, Well-maintained, and appropriately sized. Lifts shall have an emergency cut off switch appropriately located and posted.	A	\$100 per week for any deficiency for first 28 days, \$1000 per week thereafter.	
5	<b>Courtesy/Transient Docks</b> - The Marina Lessee shall maintain courtesy docks, marked and conveniently located for transient, dinghy dock. Docks are equipped with Sufficient, well- maintained cleats and access ladders. Signage is posted to indicate maximum tie up time. Courtesy docks shall be free of charge as designated by Marina Lessee as long as validated by an upland office or retail tenant.	B	7-day notice to cure	
6	<b>Lighting/Illumination</b> - The Marina Lessee shall maintain lighting in Area 2 to be Adequate and Appropriate. Light fixtures shall be well-maintained and Operational.	B		
7	<b>Public Signs</b> - The Marina Lessee shall maintain public signs appropriately located, accurate, and Well-maintained. Permanent signs shall be approved prior to installation. Temporary signs shall be professional in appearance.	B		
8	<b>Utilities</b> - The Marina Lessee shall maintain service areas Neat and Well-maintained. Utility lines shall be Neat, protected from slack and foot or vehicular traffic, and hidden from view as much as possible. Electrical panels shall be secured and unobstructed.	B		
9	<b>Trash/Recycling</b> - The Marina Lessee shall provide Sufficient, conveniently located trash containers. Refuse shall be stored in covered, waterproof receptacles. Market available recyclable products shall be collected and recycled.	B		
10	<b>Ice/Vending</b> - The Marina Lessee shall maintain Ice and vending machines free of rust or deterioration and Operational. Machine displays relate to marina themes or are generic in nature. Out of service machines shall have professional signage directing visitors to the closest Operational unit.	B		
11	<b>Pest Control</b> - The Marina Lessee shall manage pests are in coordination with the designated NPS integrated pest management coordinator and Risk and Environmental Management Plans, provide pest control treatments in accordance with those plans and maintain records to demonstrate that such treatments were provided.	B		
12	<b>Flags</b> - The Marina Lessee shall maintain National, state, or City flags and comply with the United States Flag Code. Flags shall be a minimum size of 3'x 5'. Decorative flags and banners shall be	C		7-day notice to cure

	Appropriate and Well-maintained. Flags of a maritime or nautical nature shall be displayed below the National Flag.		
	<b>Public Areas – Interior</b>		
13	<b>Marina/Dockmaster Office Area</b> - The Marina Lessee shall provide a Clean and Well-maintained Marina office entrance and waiting area furnishings.	B	1-day notice to cure
14	<b>Ventilation/Climate Control</b> - The Marina Lessee shall maintain public spaces adequately ventilated at a temperature consistent with visitor comfort.	B	
15	<b>Public Signage</b> - The Marina Lessee shall appropriately locate accurate, and Well-maintained public signs. Temporary signs shall be professional in appearance. Signage shall be Neatly arranged.	B	7-day notice to cure
16	<b>Illumination</b> - The Marina Lessee shall maintain lighting that is Adequate and Appropriate. Light fixtures shall be Clean and operational, with no empty sockets or burned-out bulbs.	B	7-day notice to cure
17	<b>Ice/Vending</b> - The Marina Lessee shall maintain Ice and vending machines or services free of rust or deterioration and Operational. Machine displays relate to marina themes or are generic in nature. Out of service machines have professional in appearance signage. Machines must accept credit and debit cards.	B	
18	<b>Drinking Fountains</b> - The Marina Lessee shall maintain water fountains and water bottle filling stations, as may be constructed, Clean and Operational	C	7-day notice to cure
	<b>Safety</b>		
19	<b>Emergency Lighting/Exit Lights/Emergency Exits</b> - The Marina Lessee shall maintain exit lights, Emergency exits and routes as required by federal regulation, state regulation or City of Miami Beach building and fire code.	A	\$100 per day for any deficiency for first 7 days, \$1000 per day thereafter
20	<b>Fire Extinguishers</b> - The Marina Lessee shall maintain fire extinguishers in compliance with federal regulations, state regulations and City of Miami Beach building and fire code.	A	
21	<b>Smoke Detectors</b> - The Marina Lessee shall maintain Operational smoke in compliance with federal regulations, state regulations and City of Miami Beach building and fire code. Battery-operated detectors shall be tested monthly and batteries replaced at least yearly.	A	
22	<b>Fire Alarms and Pull Boxes</b> - The Marina Lessee shall maintain visible and accessible fire alarms and pull boxes in compliance with the federal regulations, state regulations and City of Miami Beach building and fire code.	A	
23	<b>First Aid Kit</b> - The Marina Lessee shall have available, stocked, marked, a first aid kit that staff can easily locate.	B	1-day notice to cure
	<b>Restrooms/Showers/Laundry</b>		

24	<p><b>Public Restrooms</b> - The Marina Lessee shall maintain restroom facilities in good, Clean healthful and safe order and condition, ventilated, illuminated, and free from dirt, mud, rubbish, obstructions and physical encumbrances and shall exceed a score of 2 in the City of Miami Beach Restroom Index, as defined in Attachment 3.</p> <p>Restrooms shall have hot and cold running water. Toilets, sinks, and urinals shall be Clean, free of stains and chips, and Operational. Toilet tissue and disposable towels or hand dryers are available. Soap shall be provided in bulk dispensers. The disposal containers shall be Clean and emptied at least daily. A cleaning inspection log shall be maintained and posted.</p>	A	<p>Failure to maintain public areas or otherwise satisfy the Restroom Index at 1.5 or less: \$250 per 1st violation each year and \$1,000 thereafter</p> <p>1-day notice to cure for any other restroom deficiency</p>
25	<p><b>Emergency Instructions</b> - The Marina Lessee shall maintain Information posted with emergency assistance (fire, police, medical) and after-hours contact information.</p>	A	<p>\$100 per day for any deficiency for first 7 days, \$1000 per day thereafter</p>
26	<p><b>Water Supply</b> - The Marina Lessee shall maintain water pressure and temperature constant and comfortable. Extreme fluctuations do not occur. Faucets are accurately marked and Operational. Fixtures are Appropriate, low flow, securely installed, and properly sealed/grouted.</p>	B	7-day notice to cure
27	<p><b>Security</b> - The Marina Lessee shall have signs posted stating that the Marina is not responsible for visitor's valuables.</p>	B	
28	<p><b>Dressing Area and Clothes Storage</b> - The Marina Lessee shall provide Lockers or clothes hooks (minimum 2 per stall) located in close proximity to the shower stall. Lockers shall be clean and rust-free, with working doors and hardware. Dressing area contains Adequate seating as Appropriate.</p>	C	7-day notice to cure
29	<p><b>Mirrors</b> - The Marina Lessee shall provide Adequate mirrors for each sink. Mirrors shall be securely mounted, Clean, un-pitted, and free of cracks.</p>	C	
	<b>Dock Facilities</b>		
30	<p><b>Flotation System</b> - The Marina Lessee shall provide and maintain Adequate flotation systems. Systems shall be sturdy and free of broken or uneven sections. No un-encapsulated polystyrene shall be used. Systems shall maintain docks level above the waterline.</p>	A	<p>\$100 per day for any deficiency for first 7 days, \$1000 per day</p>

31	<b>Sewage Pump-Out</b> – The Marina Lessee shall provide pump stations that are Operational, Clean, Well-maintained, and emptied on a regular basis, Pump hoses shall be stored Neatly, and an Adequate supply of differently sized fittings shall be available. Required personal protection equipment shall be worn when handling hoses and fittings; and spill response equipment shall be accessible and well- maintained.	A	thereafter
32	<b>Dock Boxes and Trash and Recycling Receptacles</b> - The Marina Lessee shall maintain dock boxes and trash and recycling receptacles Clean, and securely constructed. Dock box and trash and recycling receptacles placement shall allow for the passage of dock carts. A policy of not storing flammable materials (e.g., paint, solvents, deck stains) in dock boxes shall be prominently posted or featured in the slip rental agreement.  The Marina Lessee shall maintain an inventory of dock boxes and trash and recycling receptacles that shall be maintained in a Clean appearance exceeding 2 of the Cleanliness Index.	A	Failure to replace in scheduled time frame: 10 percent of value of scheduled replacement projects per year and each additional year thereafter  7-day notice for any other dock box or trash and recycling receptacle deficiency
33	<b>Identification</b> - The Marina Lessee shall maintain slips shall be clearly and uniformly marked by a permanently installed number. Utility pedestals and dock boxes shall be numbered to match the slip.	B	7-day notice to cure
34	<b>Cleats</b> - The Marina Lessee shall maintain cleats or sufficient mooring pilings properly placed and secured to the dock for use at each slip. No loose or missing cleats shall be evident. A Sufficient number of properly sized cleats or mooring pilings to secure the vessel shall be available.	B	
35	<b>Boat Bumpers/Rub Rails</b> – To the extent currently existing or required by the Lease, for all floating docks, the Marina Lessee shall maintain its bumper materials so that cover materials are in good condition and properly secured to the dock. Fastening bolts and screws shall be recessed and shall not extend beyond the rails.	B	
36	<b>Dock System</b> - The Marina Lessee shall maintain fixed and floating dock systems	B	
37	<b>Dock/Decking</b> - The Marina Lessee shall maintain decking Clean, free of unnecessary obstructions and tripping hazards.	B	7-day notice to cure
38	<b>Breakwater</b> - The Marina Lessee shall ensure that the breakwater is visibly marked, functional, Well-maintained, and properly secured.	B	

39	<b><u>Gangways/Bridges</u></b> - The Marina Lessee shall maintain surfaces non-slip, free of obstructions and tripping hazards, and consistent with original condition. Railings shall be Well-maintained and sturdy enough to support visitor use.	B	
40	<b><u>Hoses</u></b> - The Marina Lessee shall maintain hoses supplied by Marina Lessee that are adequately sized for their intended use and are free of leaks. Hose systems supplied by the Marina Lessee shall be consistent throughout the marina and are Well-maintained. Hoses shall be coiled or orderly.	B	
41	<b><u>Dock Carts</u></b> - The Marina Lessee shall maintain an Adequate supply of dock carts available to allow guests to easily transport luggage, coolers, and supplies to and from their boat. Dock carts shall be Clean, functional, and Well-maintained. Carts shall be stored in an orderly manner, in convenient and dedicated areas (e.g., head of the dock, parking area, or other areas as dictated by the marina layout).	B	
42	<b><u>High speed internet</u></b> - The Marina Lessee shall provide in slip high speed internet sufficient communication and entertainment needs for the slip customers.	B	
43	<b><u>Other Amenities</u></b> – The Marina Lessee shall provide and maintain the following, but not limited to, additional amenities at the Marina <ul style="list-style-type: none"> <li>• On-site washing &amp; repair services</li> <li>• On-site marine &amp; boat chandlers</li> <li>• On-site stores, including dive shop and tackle store</li> <li>• On-site casual and formal dining restaurants</li> <li>• Shipyard relationship with heavy lift, repair &amp; parts services</li> <li>• On-site amenities including dining options &amp; pool deck/sundeck</li> <li>• On-site Captain’s Lounge</li> <li>• Concierge service that includes Hotel and resort access to spa, golf &amp; tennis and access to on-site or off-site fitness facilities.</li> </ul>	A	\$500 per day for any deficiency in this section for 7 days, \$2,000 per day thereafter following 7-day notice, Diligent pursuit of cure.
<b>Fuel Docks</b>			
44	<b><u>Fuel Docks</u></b> - The Marina Lessee shall maintain fuel docks located in protected areas away from wave action (particularly in areas with changing water levels). Stable platforms shall be provided for personal watercraft fueling. Fuel docks shall be Clean and Well-maintained.	A	\$500 per day for any deficiency in this section for 7 days to commence on the third (3rd) day after written notice from the City, \$2,000 per day thereafter.
45	<b><u>Emergency Fuel Shutoff</u></b> - The Marina Lessee shall post emergency shut off instructions in accessible locations and locate the shutoff valve in compliance with NFPA standards.	A	
46	<b><u>Fire Extinguishers</u></b> - The Marina Lessee shall maintain fire extinguishers that are accessible and located in compliance with NFPA standards and local codes. Fire extinguishers shall be appropriately signed, with operating instructions and current inspection tags.	A	

47	<b>Fuel Dispensers</b> - The Marina Lessee shall maintain dispensers, including nozzles and hoses, Operational and in good condition. Dispensers shall have functioning fire/shear valves. Dispensers shall be locked when attendant is not on duty. Local, county, and state regulatory certificates for weights and measures shall be current and posted, subject to commercially reasonable efforts to schedule, obtain or pursue the applicable regulator for inspection. Pump signs and decals shall be visible and Well-maintained. Dispenser display screens shall be protected against UV damage and vandalism.	A	
48	<b>Smoking Policy</b> - The Marina Lessee shall not permit smoking near the fuel dispensers, and signs shall be posted. No smoking policy shall be enforced.	A	
49	<b>Required Public Safety Notices</b> - The Marina Lessee shall conspicuously post required safety notices around pump islands. Signs at fuel dispensers shall include “no smoking” signs, “switch off engine” signs, and “emergency fuel shut-off” signs. Signage requirements are listed in NFPA 303 - Fire Protection Standards for Marinas and Boatyards.	A	
50	<b>Emergency Response and Spill Containment Equipment</b> - The Marina Lessee shall provide fire response equipment at the fuel dock in accordance with NFPA standards & other applicable regulations. Spill response equipment shall be Well-maintained and accessible. This equipment shall be specified in the Marina Lessee’s Emergency Response plans and shall be Adequate to respond to incidental and non-incident fuel and oil spills. The quantity of absorbent material equals a ratio of approximately three feet of boom to every foot of the largest boat within the marina. Equipment shall include personal protective equipment for emergency response. Use of dispersants shall be approved by the City. Fuel attendants shall be trained as specified in the Emergency Response plan.	A	
51	<b>Fuel Storage Tanks</b> - The Marina Lessee shall maintain secondary containment and automatic leak detection systems that shall be provided for aboveground, underground and dock tanks, piping, and dispensers, as required.	A	\$500 per day for any deficiency in this section for 7 days, \$2,000 per day thereafter.
52	<b>Fuel Lines</b> - The Marina Lessee shall maintain fuel lines located and protected from physical damage. Sufficient lengths of oil-resistant flexible hose shall be used between the shore, the tank, and the dispensers as required by changes in water level. Emergency shut off valves shall be appropriately located in accordance with NFPA and shall be posted.	A	
52	<b>Hazardous Materials Storage</b> - The Marina Lessee shall clearly mark areas storing flammable or hazardous materials are. Flammable liquids shall not be stored in battery charging or storage rooms. Hazardous materials near or over water shall have secondary containment.	A	
53	<b>Other Safety Equipment</b> - The Marina Lessee shall provide other required safety equipment, including eye-wash stations and emergency ladders, that are Operational and appropriately located.	A	\$500 per day for any deficiency in this section for 7 days, \$2,000 per day



			thereafter.
54	<b>Available Fuels</b> - At a minimum Tenant shall sell, but is not limited to, unleaded gasoline, diesel fuel, 2 and 4 cycle Motor oil.	C	7-day notice to cure,
	<b>Dock Safety</b>		
55	<b>Fire Suppression Systems</b> - The Marina Lessee shall maintain Fire suppression systems in Operational condition, with current inspection certificates.	A	\$100 per day for any identified deficiency in this section for 7 days, \$1,000 per day thereafter.
56	<b>Fire Alarms and Pull Boxes</b> - The Marina Lessee shall maintain visible and accessible fire alarms and pull boxes.	A	
57	<b>Emergency Lighting</b> - The Marina Lessee shall maintain emergency backup battery or generator lighting systems in Operational and good condition.	A	
58	<b>Slip Utility Connections – Electrical</b> – The Marina Lessee shall maintain electrical systems in compliance with the Federal regulations, State regulations and City of Miami Beach building code.	A	
59	<b>Slip Utility Connections – Water</b> - The Marina Lessee shall maintain water lines in Operational condition, with working spigots in compliance with the Federal regulations, State regulations and City of Miami Beach building code.	A	
60	<b>Security and Lighting</b> - The Marina Lessee shall maintain Adequate outside lighting throughout the marina for night operations. Security system allowing access to slip areas shall be Operational. Security personnel shall be provided as after scheduled hours.	A	
61	<b>Lifesaving Devices</b> - The Marina Lessee shall maintain at least one USCG approved, throw-type flotation device (with at least 60 feet of ¾-inch diameter rope attached or a reach pole) accessible on the fuel dock and every 200 feet on other docks.	A	\$100 per day for any identified deficiency in this section for 7 days, \$1,000 per day thereafter.
62	<b>Safety Ladders</b> - The Marina Lessee shall maintain safety ladders that are secured, and appropriately located throughout the marina.	A	
	<b>OPERATIONAL STANDARDS – AREA 2</b>		
	<b>Slip Management</b>		
63	<b>Maximum Boat Size</b> - The Marina Lessee shall monitor and enforce that boats do not unreasonably exceed slip capacity. Length and beam measurements shall include all temporary and permanent appurtenances.	B	1-day Notice

64	<b>Occupant Management</b> - The Marina Lessee shall maintain accurate and current records. Slip records shall include slip number and location, slip dimensions, and utilities. Slip renter records shall include boat owner's name, address, contact information, and authorized users. Boat records shall include boat name, hull identification number, model, year made, manufacturer, color, type, registration number, country and state (if applicable), and boat insurance information. City-approved rental agreements, conforming to applicable legal requirements, shall be executed for each slip rental.	B	
65	<b>Quiet Hours</b> - The Marina Lessee shall enforce quiet hours.	B	
66	<b>Dock Checks</b> - The Marina Lessee shall complete daily dock checks (decking is secure and free of tripping hazards; cleats, ropes, and utility lines are secure; bow pulpits and anchors are not overhanging the dock; and utilities are Operational). Daily slip checks shall be completed (boats do not appear to be in danger of sinking, burning, or breaking loose).	B	
67	<b>Courtesy Docks</b> - Unless specified in the Lease, spaces on courtesy docks designated by Marina Lessee are not rented. Courtesy dock time limits shall be enforced.	B	
68	<b>Marina Management</b> - The Marina Lessee shall prominently display a diagram of the marina, including the location of all slips and supporting facilities, that is readable, and accurate. The marina diagram shall be updated as necessary.	C	7-day Notice, \$100 per week thereafter
69	<b>Waitlist</b> – If demand exists the Marina Lessee shall maintain waiting lists for the rental of buoys, slips, and slip transfers. Requests are accommodated in the order they were received.	C	7-day Notice, \$100 per week thereafter
	<b>Fuel Dispensing</b>		
70	<b>Sales Operations</b> - The Marina Lessee shall monitor and enforce that only employees trained on standard operating procedures for fuel dock operations dispense fuel.	A	\$100 per day for any identified deficiency in this section for 7 days, \$1,000 per day thereafter
71	<b>Emergency Action/Response Plan</b> - The Marina Lessee shall have a City-approved fuel dock emergency response plan that is accessible to staff. Staff shall be trained in emergency response plans.	A	
72	<b>Oil and Fuel Spills</b> - The Marina Lessee shall follow the City-approved Emergency Response plan procedures to be established by Marina Lessee. are followed. Spills are cleaned up promptly. Staff shall be trained in Emergency Response procedures.	A	
	<b>Other Certifications</b>		
73	The Marina Lessee shall use reasonable efforts to pursue and maintain, once received, a Florida Clean Marina Program designation or such other successor designation, if available.	C	90-day Notice

	<b>Accessibility</b>		
74	<b>Accessibility</b> – The Marina Lessee shall implement and operate facilities and services meet the requirements of the Americans with Disabilities and Architectural Barriers Acts and all other applicable laws related to accessibility.	A	\$100 per day for up to 28 days, \$1,000 per week thereafter.
	<b>Services</b>		
	<b>Reservation Services</b>		
75	<b>Payment Methods</b> - The Marina Lessee shall maintain payment systems that honor credit cards (including MasterCard, Visa, American Express, and Discover), debit cards and other payment methods (personal checks, and gift cards) at the Marina Lessee’s discretion.	B	1-day Notice
76	<b>Deposits</b> - The Marina Lessee shall, at its discretion, have the right to accept rental deposits.	B	
77	<b>Cancellations</b> - The Marina Lessee shall clearly state the slip rental cancellation and refund policy is in the slip rental agreement, and the policy is subject to approval by the City.	B	
78	<b>Availability</b> - The Marina Lessee shall maintain reservation services during business hours.	B	7-day Notice
79	<b>Knowledge of Slip Rental Staff</b> - The Marina Lessee shall have reservation agents that provide accurate information about rates, slip rental policies and marina services, local attractions, access, etc. that shall be available to the general public and the City.	B	
80	<b>Property Management Information Systems</b> - The Marina Lessee shall maintain a slip reservation system that is integrated with the Marina Lessee’s property management information system and provides comprehensive reporting capabilities.	C	30-day Notice
	<b>Registration Services</b>		
81	<b>Hours of Operation</b> - The Marina Lessee shall operate the facilities and services in accordance with posted hours of operation. Hours of operation shall be prominently displayed at each facility.	B	1-day Notice
82	<b>Check-In/Out</b> - The Marina Lessee shall complete transient check-in/out in a friendly and professional manner. The slip rental staff shall confirm slip type and length, duration of stay, departure date and check-out time, and method of payment. Slip rental staff shall also identify any extra charges (utility add-ons, donations to groups, and associations, etc.). Comment cards or the concessioner’s comments website shall include in the check-out material.	B	

83	<b>City Orientation Material</b> - City-specific materials are available (brochures, maps, newsletters, and special notices). Additional information shall be available about the area (local businesses, places of interest by land and by boat, major highways, airports, restaurants, etc.).	C	7-day Notice
<b>Other Services</b>			
84	<b>Access</b> - The Marina Lessee shall provide slip renters 24-hour access to their slips.	B	1-day Notice, \$100 per day thereafter
85	<b>Private Sales</b> - Private sales by slip lessees of boats in marina areas are not permitted unless conducted through a licensed commercial broker who in any event shall not be permitted to conduct showings advertised as open to the public. Boats shall not display "For Sale" signs. No slips or moorings are rented that are used for promotional display or sale of private boats or boat accessories. Concessioner boat brokerage may be provided by the Marina Lessee or sub-lessee.	B	1-day Notice
86	<b>Private Rentals</b> - Private overnight rentals of boats in marina areas are not permitted.	B	
87	<b>Dock-Hand Services</b> – Marina Lessee shall be required to have prompt and courteous valet services.	B	
88	<b>Other Services</b> - The Marina Lessee shall provide services including but not limited to, launch and retrieve, pilot/docking, chase boat, towing, landside shuttle, dive services, and pump-out. Service response times shall be stated to the visitor at the time of request.	B	1-day Notice
89	<b>Lost and Found</b> - The Marina Lessee shall log, and secure items found in a designated location. Records shall be maintained, and procedures established to ensure prompt, accurate responses to visitor inquiries.	C	7-day Notice
<b>Outside Contractor Requirements</b>			
90	<b>Allowable Activities</b> - The Marina Lessee shall ensure that only qualified contractors perform vessel maintenance. Significant vessel maintenance shall occur outside the Marina.	A	\$500 per day
91	<b>Qualifications and Credentials</b> - The Marina Lessee shall maintain an approved list of qualified contractors. Marina office files on qualified contractors shall include a certificate of insurance naming the City as an additional insured.	C	7-day Notice
<b>Marina Safety</b>			
92	<b>Marine Radio</b> - The Marina Lessee shall equip the Marina with licensed VHF marine radio, with back up available. Staff shall be trained in radio use and communication protocols and carry Operational VHF marine radio units.	A	\$500 per day for any deficiency for up to 7 days, \$2,000 per day thereafter
93	<b>Emergency Frequency and Protocol</b> - The Marina Lessee shall maintain a port operations frequency with a specific transmission channel and call sign.	A	

94	<b>Incident Reporting</b> - The Marina Lessee shall complete and maintain incident report records. Major incidents shall be immediately reported to the City.	B	1-day notice
95	<b>After Dark Procedures</b> – The Marina Lessee shall provide after hours in-person security. Staff completes security rounds by walking all docks and support facilities. A security log shall note suspicious activities. Staff shall check that gates, storage areas, and fuel areas are secure and/or locked. The marina shall be patrolled 24/7.	B	
<b>Personnel</b>			
96	<b>Staffing Levels</b> - The Marina Lessee shall Sufficiently staff facilities and services to provide adequate service.	A	\$100 per day for up to 7 days, \$1,000 per day thereafter
97	<b>Employee Attitude</b> - The Marina Lessee shall ensure employees project a friendly and helpful attitude and are capable and willing to answer customer questions (about both job and general City information).	C	5-day notice
98	<b>Employee Appearance</b> - The Marina Lessee shall have employees wear apparel and employees interfacing with the public shall wear a name tag identifying them as concession staff. Employees shall present a Neat and Clean appearance.	C	
99	<b>Management Availability</b> - The Marina Lessee shall have marina facilities general manager or manager on duty during business hours and reasonably available outside of business hours.  The marina general manager shall possess a strong background in the marina industry. Other certifications (Marina Operator, Marina Manager) shall be maintained, as required.	B	
100	<b>Employee Training Programs</b> - The Marina Lessee shall implement an active training program for employees in the development of necessary skills and procedures. Training shall emphasize work performance and, as Appropriate to the position, cover requirements such as technical training, emergency response, cleanliness, employee attitude, and Marina Standards. Training shall be documented.	B	30-day Notice
<b>Rates</b>			
101	<b>Approved Rates</b> - Rates and other customer charges shall comply with the Lease.	A	\$100 per incorrect charge for up to 7 days, \$1,000 per incorrect charge thereafter
<b>Maintenance Area Room</b>			
102	<b>Site Utilities, Equipment, and Delivery Area</b> - The Marina Lessee shall provide service areas and equipment that are marked, Well-maintained, and screened from public view as much as possible.	B	7-day notice to cure

103	<b>Organization</b> - The Marina Lessee shall maintain a Neat maintenance area with tools and equipment stored in an orderly fashion.	B	
104	<b>Storage</b> - The Marina Lessee shall Neatly and securely store parts, tools and supplies. Parts shall be stored off the floor on industrial shelves suitable for the weight of the parts and physical environment in which the shelves are used.	B	
105	<b>Floors</b> - The Marina Lessee shall maintain the maintenance area floor free of clutter and tripping hazards such as extension cords, power hoses, etc. Floor cracks shall be filled to prevent seepage.	B	
106	<b>Shop Lighting</b> - The Marina Lessee shall maintain lighting Adequate to perform marina maintenance activities safely. Fixed ceiling lighting and portable lights shall be Clean and Operational with no burned-out bulbs. Fluorescent light bulbs shall be contained in a Clean protective cover.	B	
107	<b>Pest Control</b> - The Marina Lessee shall manage pests in coordination with the designated NPS integrated pest management coordinator and Risk and Environmental Management Plans, provide pest control treatments in accordance with those plans and maintain records to demonstrate that such treatments were provided.	B	
<b>Maintenance Area/Room Safety</b>			
108	<b>Hazardous Materials</b> - The Marina Lessee shall collect, store, and dispose of hazardous materials in compliance with state and federal laws, and in accordance with risk and environmental management plans.	A	\$100 per day for any deficiency in this section for first 7 days, \$1000 per day thereafter.
109	<b>Safety Data Sheets</b> - The Marina Lessee shall maintain current safety data sheets as required by State & Federal Regulation	A	
110	<b>Fire Extinguishers</b> - The Marina Lessee shall maintain Operational fire extinguishers in compliance with the Federal regulations, State regulations, and City of Miami Beach building and fire code.	A	
111	<b>Smoke Detectors</b> - The Marina Lessee shall maintain smoke detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors are tested monthly and batteries are replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	A	
112	<b>Carbon Monoxide Detectors</b> - The Marina Lessee shall maintain carbon monoxide detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors shall test monthly and batteries replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	A	
113	<b>Eye-Wash Stations</b> - The Marina Lessee shall maintain emergency eyewashes in compliance with OSHA standards.	A	



## Attachment 1

### CLEANLINESS INDEX

The Public Area Cleanliness Index must be a defined set of ratings that can effectively provide an objective measurement on the cleanliness of the city.

The proposed cleanliness index is based on a 6 point scale that rates four factors that directly affect the cleanliness of the public area. The four factors are Trash/Litter, Litter/Garbage Cans, Organic Materials, and Fecal Matter. The tables beginning on the next page contains the proposed cleanliness index.

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<b>1 Extremely Clean</b>	<ul style="list-style-type: none"> <li>No litter and/or debris on entire block face.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Isolated instances of small fresh organic material, such as leaves, branches, etc., cover the <u>paved</u> area.</li> <li>No large organic material, such as tree limbs or palm fronds on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Fecal matter is not visible.</li> </ul>
<b>2 Clean</b>	<ul style="list-style-type: none"> <li>Isolated pieces of litter on the entire assessed area. The area is not void of litter, but may contain an isolated incidence of litter.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full. There is isolated piece of trash outside of the can.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Less than 10% of a 10 step distance <u>paved</u> area is covered by small organic materials, but occurring no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>No large organic material on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Past residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.</li> </ul>



Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter. In a 10 step distance the litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline: Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</i></p>	<ul style="list-style-type: none"> <li>• Can is functioning, but is full with trash, which can be seen from the eye level. There is no litter above the rain guard. There is some residue from past garbage.</li> <li>• Can is in a clean condition, but may have one small isolated instance of a sticker or graffiti, which the eye is not drawn to it.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic materials is on the ground.</li> <li>• Isolated case of organic material accumulation caused by standing water and poor drainage.</li> </ul>	<ul style="list-style-type: none"> <li>• One instance of fecal matter is present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>4</b> <b>Somewhat Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistently scattered trash. In a 10 step distance the trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard. In some cases, there is evidence that there is improper use by the residents.</li> <li>• Can is in a working condition, but contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic materials is on the ground.</li> <li>• 2 to 3 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• The organic material is beginning to turn brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Two instances of fecal matter are present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>5</b> <b>Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash. In a 10 step distance there are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> </ul>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard and beginning to overflow since there is no room to put additional trash. There may be evidence of improper use by the residents.</li> <li>• Can has some damage, but is usable.</li> <li>• A large area of the can contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Over 10 pieces of large organic materials is on the ground.</li> <li>• 3-4 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Faint foul odor is present due to standing water.</li> <li>• The organic material has been on the ground for some time and has turned brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Three instances of fecal matter are present on the public area.</li> </ul>
<p style="text-align: center;"><b>6</b> <b>Extremely Dirty</b></p>	<p>Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street.</p> <p><i>Guideline:</i> This area has been neglected for a long time and needs help. Heavy equipment will be required to clean this area. The area may also be affected due to other circumstances (i.e. nearby constructions sites, homeless activity, etc.)</p>	<ul style="list-style-type: none"> <li>• Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation.</li> <li>• Can is damaged and needs to be replaced.</li> <li>• Can is covered of items such as stickers or graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of a 10 step <u>paved</u> area is covered with organic material. The organic material has been on the ground for some time and has turned brown.</li> <li>• Over 5 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Strong foul odor is present due to standing water.</li> </ul>	<ul style="list-style-type: none"> <li>• Four or more instances of fecal matter are present on the public area.</li> </ul>

**CLEANLINESS INDEX FOR WATERWAYS**

Index	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>1</b> <b>Extremely Clean</b></p>	<ul style="list-style-type: none"> <li>• No litter and/or debris floating on or in the water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• No or isolated instances of small fresh organic material.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>2</b> <b>Clean</b></p>	<ul style="list-style-type: none"> <li>• Isolated pieces of litter floating on or in the entire area of water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Less than 10% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small amount of litter including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. More than two pieces of litter and less than 5% of about a 20 sq. foot area of water up to the high tide watermark are covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul> <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

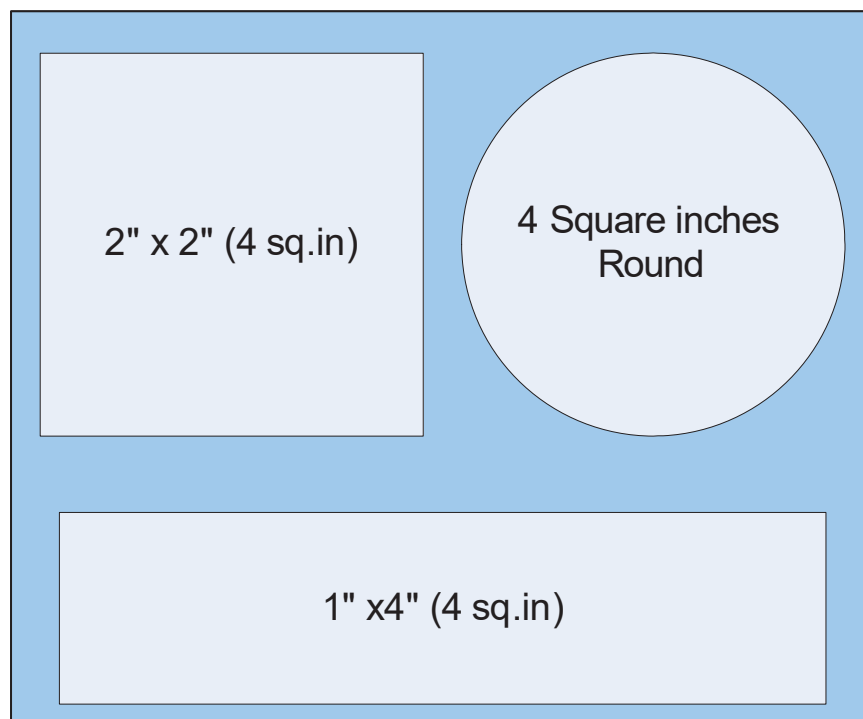
Index	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>4</b> <b>Somewhat Dirty</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter, including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 5% and 10% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• Slight unnatural or foul smell is being emitted.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water up to the high tide watermark, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>5</b> <b>Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 10% and 25% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• One extra-large piece of litter, such as a tire, a grocery cart, etc.</li> <li>• Strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of about a 20 sq. foot area of water and up to the high tide watermark are covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Over 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

Index	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>6</b> <b>Extremely Dirty</b></p>	<ul style="list-style-type: none"> <li>• Large accumulation of litter and trash including floating liquids, such as oil. Over 25% of about a 20 sq. foot area of water area up to the high tide watermark are covered by litter. This includes litter floating on the water or in the water and up to the high tide watermark. There may be evidence of illegal dumping.</li> <li>• Two or more extra-large pieces of litter, such as tires, a grocery carts, etc.</li> <li>• Very strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of the water and up to the high tide watermark is covered by organic material.</li> </ul>

The cleanliness index makes references to small and large litter, which can directly affect the cleanliness score of a public area. The definition used to distinguish the difference between small and large litter came from the Florida Center for Solid and Hazardous Waste Management (the Center). Each year the Center conducts a roadside litter survey for the State of Florida and is funded through the Florida Department of Environmental Protection (FDEP). Starting in 1993, the Florida Legislature designated the Center and funded the litter survey to measure progress toward the state’s litter reduction goal as defined in the Solid Waste Management Act.

Using the Center’s definition for litter, items or pieces of items four square inches or larger in size are classified as “large litter,” and items or pieces of items under four square inches are classified as “small litter.” As a reference, the figure below contains three templates of 4 square inch areas in a rectangle, square, and round shape are depicted in the figure below. If the litter fits in any of these areas, then it is considered small litter. If the litter is too big to fit in any of these areas, then it is considered large litter.

The two tables following the templates contain examples of small versus large litter or trash.



## Templates for Small Litter Distinctions

Examples of Small Litter: Cigarette butts, Bottle caps, Straws, Candy packaging and wrappers, Polyfoam packing materials, Plastic espresso coffee cups

Examples of Large Litter: Beer cans, Beer bottles, Soft drink (glass), Soft drink (cans), Soft drink (plastic), Sport drink (glass), Sport drink (plastic), Wine / Liquor (glass), Wine / Liquor (plastic/other), Milk / Juice (Plastic), Milk / Juice (Glass), Six pack plastic rings, Plastic drink cups, Paper Cups (Hot), Paper Cups (Cold), Polystyrene cups (foam), Cup lids, Plastic retail bags, Paper retail bags, Paper bags – fast food, Plastic bags – not retail, Paper bags – not retail. Zipper bags / sandwich bags, Cardboard boxes, Paperboard (cereal type), Paper beverage cases, Plastic jars / bottles/ lids, Glass jars / bottles misc., Cans – steel, Cans – aluminum, Aerosol cans, Paper food wrap, Utensils, Napkins, Paper fast food plates, Poly fast food plates, Clothing, Printed materials (newspapers, flyers, books, etc.)

---

**Attachment 2**  
**Public Area Appearance Index– Scale 1-6**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Appearance Index factors being assessed are Sidewalks, Roadways, Turf, and Plant Beds.

**Sidewalks**

- Smooth and even with no cracked or broken panels/ bricks
- Curb damage free
- Painted areas fully covered (Curbs)
- No graffiti or advertisements
- Sidewalk furniture excellent condition (benches (wood/concrete/steel), bike racks, water fountains, gate/latches, handrails, bollards)

**Roadways Paved Areas**

- Asphalt smooth
- No cracks, holes, or patches
- Pavement markings crisp and visible
- Crosswalks clearly identified
- Signage/poles/mast arms in excellent condition with no unused/unnecessary poles, etc.

**Turf**

- Cut & Trim
- Green
- No weeds
- No overgrowth
- No open holes or bare patches

**Plant Beds**

- Fully planted
- Fully mulched
- No weeds
- No encroachment
- Healthy appearance and damage free



**Attachment 3**  
**RESTROOM INDEX**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Criteria for each area are listed below

Restroom Index factors being assessed are Toilet Areas, Appearance Sink Area, Appearance Interior, and Exterior Appearance

**Cleanliness Toilet Area**

- Floors mopped/clean/no stains
- Toilets/urinal clean/no litter visible/ no leaks
- No unpleasant odor
- Toilet paper unavailable/usable
- No graffiti

**Cleanliness Sink Area**

- Floors mopped/clean/no stains
- Sink and/or mirror clean/no leaks
- Trash can no more than  $\frac{3}{4}$  full
- Walls clean/no graffiti
- Soap dispenser clean

**Appearance Interior**

- Stable/operable toilet/urinal partition enclosures
- Stall doors rust free/fully painted/latch and hinge functional
- Sink faucets and soap dispenser functional
- Hand dryer or paper dispenser functional
- All interior lights functional

**Appearance / Cleanliness Exterior**

- Signage visible and clean
- No graffiti
- No unpleasant odor
- No trash/litter
- Entrance door rust free/fully painted/functional (rollup or traditional)

**EXHIBIT “J”**  
**Residential Parcel Legal Description**

A maximum of 0.3 acres of the following described land to consist of the to-be-designed lobby and ancillary areas of the residential portion of the Project: All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida, TOGETHER WITH air space above such Lots to the extent required for the 275,000 square foot residential improvements to be constructed therein.

The proposed design of the project to be developed by Developer and Residential Developer pursuant to the Development Agreement will evolve through the design development process and accordingly, the initial legal description of the Residential Parcel will be preliminary in nature. The initial legal description will be consistent with the limitations contained in the Air Rights Parcel PSA and, in accordance with the Development Agreement, shall be sufficient to accommodate the design development for the residential portion of such project and will thereafter be revised to conform to the updated and actual legal description thereof following receipt of all Governmental Approvals for such project and following completion of such project in accordance with the Development Agreement.

**EXHIBIT “K”  
Parking Standards**

**[see attached]**

# CITY OF MIAMI BEACH

## MARINA STANDARDS FOR PARKING AND PARKING GARAGES AND FINES IN LIEU OF DEFAULT

Defined terms shall be the same as provided in that certain Ground Lease Agreement (the "Lease") as of even date herewith by and between THE CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation (the "City") and MB MARINA PARK, LLC, a Delaware limited liability company, (the "Marina Lessee") except as specifically provided otherwise herein. The following definitions apply to these terms throughout the standards:

- Adequate: As much as necessary for the intended duration of use
- Appropriate: Suitable to the level of service or as specified in the operating plan
- Clean: Free from dirt, marks, stains, or unwanted matter consistent with City of Miami Beach Cleanliness Standards exceeding a score of 2 (Attachment 1)
- Neat: Arranged in an orderly, tidy manner
- Operational: In use or ready for use
- Sufficient: Enough for the number of persons
- Maintained: Kept in good order or condition

Standards are ranked and penalties assessed in the in the following manner:

RANKING	DESCRIPTION	Fine
A	<b>Major:</b> Priority conditions or practices create or have the potential to exert a <b>significant</b> impairment to resident, visitor or employee health and safety, City resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	Immediate Fine shown with each A ranked standard below unless expressly stated otherwise in the specific designated category.
B	<b>Moderate:</b> Second Priority conditions or practices create or have the potential to exert a <b>moderate</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per day upon expiration of Written Notice to Cure.
C	<b>Minor:</b> Third Priority conditions or practices create or have a potential to exert a <b>minor</b> impairment to resident, visitor or employee health and safety, park resources, resident and visitor services or enjoyment, leased facilities, or associated personal property.	\$100 per week upon expiration of Written Notice to Cure.

For avoidance of doubt, where the term “World Class” is used herein it shall be deemed complied with as long as the Marina Lessee is in compliance with the specific criteria for maintenance and operations set forth in this Exhibit. Standards shall be updated to reflect consultant recommendations for a World Class Marina, as provided in the Lease.

Penalties shall be adjusted for the Consumer Price Index changes on each 10-year anniversary of the Lease.

To the extent the items below are not currently provided by the Marina Lessee, but are required to be provided in accordance with the terms of the Lease, the Marina Standard’s shall not apply until such time that the item is required to be installed or performed in accordance with the terms and conditions of the Lease.

If the Marina Lessee fails to comply with any maintenance or operational standard set forth below then the City may elect to issue an infraction fine by delivering written notice to the Marina Lessee (each notice to be referred to as an “**Infraction Notice**”). An Infraction Notice shall be effectively delivered if sent by e-mail to [mbminfo@suntex.com](mailto:mbminfo@suntex.com) and subsequently sent by overnight mail on the following business day to the Marina Lessee in accordance with the notice requirements set forth in the Lease or hand delivered to the Marina Lessee to the front office or to the Marina Manager. Additionally, on a calendar quarterly basis, the City shall deliver the Marina Lessee a written notice containing an invoice for all fines incurred during the previous calendar quarter that remain unpaid as set forth herein and such fines shall become due and payable as Base Rent within thirty (30) days of the receipt by the Marina Lessee of the quarterly fine notice. If the fines are not paid then the City shall send a final notice pursuant to the Default Notice Procedure and ten days after receipt of such final notice, if the fines have not been paid, then the City may treat the failure as a breach entitling the City to exercise its remedies in Article XX of the Lease. Marina Lessee may elect to contest the infractions or fines received within a respective quarter in accordance with Article 20.13 in the event the quarterly fines exceed a monetary threshold of \$15,000.

“**Fine Notice Procedure**” means delivery of a notice to pay fines, to all Lessee notice parties, via hand delivery or overnight delivery with a copy via email, with a legend in bold and all caps at the top of the notice that states the following: THIS IS A NOTICE OF FAILURE TO PAY FINES AS REQUIRED PER THE LEASE. The notice shall set forth the amount of the fines, the infraction that the fines relate to and the date by which such fines must be paid.

Anything to the contrary notwithstanding in the Standards set forth below, except for infractions that jeopardize the public health, safety or welfare, if the Infraction is such that it cannot reasonably be constructed or completed within the stated notice period, due to required construction, product lead times, or regulatory requirements (i.e building permits), Marina Lessee shall not be subject to fine as long as the Marina Lessee is diligently pursuing completion of the correction in an expeditious manner after receipt of the in accordance with the Notice Infraction.

Standard Number	<u>FACILITY STANDARDS: PARKING GARAGES</u>	A, B, C Ranking	FINE/CURE PERIOD
<u>PARKING</u>			
<u>DESCRIPTION</u>		RANK	FINE
<b>1</b>	<p><b>Vehicle Parking</b> - Parking spaces as outlined in the Lease Agreement, including all surface parking, the Parking Garages, and Parking in the Replacement Facilities/Alternate Replacement Facility (collectively, "Marina Parking") shall be available. Paved parking shall be well Maintained and the spaces shall be marked.</p> <p>The Marina Lessee maintain the Marina Parking in good, Clean healthful and safe order and condition. The Marina Lessee shall maintain the Marina Parking free from dirt, mud, rubbish, obstructions and physical encumbrances (except as provided in the Parking Garage Leases). The Marina Lessee shall maintain the cleanliness, parking appearance, and exterior appearance of the Marina Parking in accordance with the City of Miami Beach Parking Garage Index as defined in Attachment 1, exceeding a 2 on the Index. In the event of a discrepancy between the Parking Management Agreement and these Standards, the Standards shall control.</p> <p>A. 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.</p> <p>B. Remove all papers, debris, filth and refuse from such areas and wash or thoroughly sweep paved areas as required.</p> <p>C. 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</p> <p>D. Clean lighting fixtures and relamp as needed.</p> <p>E. Repair striping, markers, directional signs as necessary to maintain in first-class condition.</p> <p>F. Employ courteous and uniformed personnel for patrol to provide adequate security or otherwise in compliance with the Parking Management Agreement.</p> <p>Marina Lessee shall be required to maintain the Parking Garages in accordance with the standards set forth in the Parking Management Agreement, as the same may be revised from time to time. In the event of a discrepancy between the Parking Management Agreement and these Marina Standards, the Marina Standards shall control.</p>	<b>A</b>	<p>Failure to maintain cleanliness, parking appearance, and exterior appearance of the Parking Garages at a City of Miami Beach Parking Garage Index exceeding 2: \$250 per 1st violation each year and, following 48 hour notice, \$1,000 thereafter.</p> <p>Failure to have on-site personnel to resolve parking access issues: \$100 per occurrence.</p>

2	<p><b>Revenue Control Equipment:</b> On or before the 12/31/2023, the Parking garages shall have revenue control equipment operation with at least 95 percent availability per year. Revenue control equipment shall have communication with a live person capable to resolve access/egress issue within 15 minutes during operational hours for office, retail and marina facilities, and within 2 hours during non-operational hours.</p>	A	<p>Failure of revenue control equipment below 95 percent availability per year: \$1,000 per year.</p> <p>Failure to have on-site personnel to resolve parking access issues: \$100 per occurrence.</p>
<b>Restrooms/Showers/Laundry</b>			
3	<p><b>Public Restrooms</b> - The Marina Lessee shall maintain restroom facilities in good, Clean healthful and safe order and condition, ventilated, illuminated, and free from dirt, mud, rubbish, obstructions and physical encumbrances at a City of Miami Beach Restroom Index, as defined in Attachment 3, exceeding 2.</p> <p>Restrooms shall have hot and cold running water. Toilets, sinks, and urinals shall be Clean, free of stains and chips, and Operational. Toilet tissue and disposable towels or hand dryers are available. Soap shall be provided in bulk dispensers. The disposal containers shall be Clean and emptied at least daily. A cleaning inspection log shall be maintained and posted.</p>	A	<p>Failure to maintain public areas or otherwise satisfy the Restroom Index exceeding 2: \$250 per 1st violation each year and \$1,000 thereafter</p> <p>1-day notice to cure for any restroom deficiency</p>
4	<p><b>Emergency Instructions</b> - The Marina Lessee shall maintain Information posted with emergency assistance (fire, police, medical) and after-hours contact information.</p>	A	<p>\$100 per day for any deficiency for first 7 days, \$1000 per day thereafter</p>
5	<p><b>Shower Stalls</b> - The Marina Lessee shall maintain shower stalls Clean, ventilated, and free of visible mold &amp; mildew. Shower floors shall be equipped with non-skid surfaces. Showers that are out of service shall have professional in appearance signage and shall be made Operational as soon as possible.</p>	B	1-day notice to cure
6	<p><b>Shower Enclosures</b> - The Marina Lessee shall provide shower curtains are of Adequate length and width to fit the enclosure and to prevent water from flowing onto the outer areas, as well as to assure privacy. Shower curtains and enclosures shall be clean, free of mold and mildew, and well- maintained.</p>	B	
7	<p><b>Water Supply</b> - The Marina Lessee shall maintain water pressure and temperature constant and comfortable. Extreme fluctuations do not occur. Faucets are accurately marked and Operational. Fixtures are Appropriate, low flow, securely installed, and properly sealed/grouted.</p>	B	7-day notice to cure

8	<b>Security</b> - The Marina Lessee shall have signs posted stating that the Marina is not responsible for visitor's valuables.	B	
9	<b>Public Laundry</b> - The Marina Lessee shall maintain a minimum of two washers and dryers available for use by marina guests. Equipment shall be Clean, Well-maintained free of rust or deterioration, and Operational. Lint traps and dryers shall be inspected and cleaned daily. Washers and dryers shall be energy and water efficient. Equipment that is out of service shall have professional in appearance signage and shall be made Operational as soon as possible.	B	
10	<b>Dressing Area and Clothes Storage</b> - The Marina Lessee shall provide Lockers or clothes hooks (minimum 2 per stall) located in close proximity to the shower stall. Lockers shall be clean and rust-free, with working doors and hardware. Dressing area contains Adequate seating as Appropriate.	C	7-day notice to cure
11	<b>Mirrors</b> - The Marina Lessee shall provide Adequate mirrors for each sink. Mirrors shall be securely mounted, Clean, un-pitted, and free of cracks.	C	7-day notice to cure
<b>Maintenance Area Room</b>			
12	<b>Site Utilities, Equipment, and Delivery Area</b> - The Marina Lessee shall provide service areas and equipment that are marked, Well-maintained, and screened from public view as much as possible.	B	7-day notice to cure
13	<b>Organization</b> - The Marina Lessee shall maintain a Neat the maintenance area with tools and equipment stored in an orderly fashion.	B	
14	<b>Storage</b> - The Marina Lessee shall Neatly and securely store parts, tools and supplies. Parts shall be stored off the floor on industrial shelves suitable for the weight of the parts and physical environment in which the shelves are used.	B	
15	<b>Floors</b> - The Marina Lessee shall maintain the maintenance area floor free of clutter and tripping hazards such as extension cords, power hoses, etc. Floor cracks shall be filled to prevent seepage.	B	
16	<b>Shop Lighting</b> - The Marina Lessee shall maintain lighting Adequate to perform marina maintenance activities safely. Fixed ceiling lighting and portable lights shall be Clean and Operational with no burned-out bulbs. Fluorescent light bulbs shall be contained in a Clean protective cover.	B	
17	<b>Pest Control</b> - The Marina Lessee shall manage pests in coordination with the designated NPS integrated pest management coordinator and Risk and Environmental Management Plans, provide pest control treatments in accordance with those plans and maintain records to demonstrate that such treatments were provided.	B	



	<b>Maintenance Area/Room Safety</b>		
<b>18</b>	<b><u>Hazardous Materials</u></b> - The Marina Lessee shall collect, store, and dispose of hazardous materials in compliance with state and federal laws, and in accordance with risk and environmental management plans.	<b>A</b>	\$100 per day for any deficiency in this section for first 7 days, \$1000 per day thereafter
<b>19</b>	<b><u>Safety Data Sheets</u></b> - The Marina Lessee shall maintain current safety data sheets as required by State & Federal Regulation	<b>A</b>	
<b>20</b>	<b><u>Fire Extinguishers</u></b> - The Marina Lessee shall maintain Operational fire extinguishers in compliance with the Federal regulations, State regulations, and City of Miami Beach building and fire code.	<b>A</b>	
<b>21</b>	<b><u>Smoke Detectors</u></b> - The Marina Lessee shall maintain smoke detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors are tested monthly and batteries are replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	<b>A</b>	
<b>22</b>	<b><u>Carbon Monoxide Detectors</u></b> - The Marina Lessee shall maintain carbon monoxide detectors in compliance with the City of Miami Beach building and fire code. Battery-operated detectors shall test monthly and batteries replaced at least yearly with documentation regarding dates tested and dates batteries replaced.	<b>A</b>	

## **Attachment 1**

### **Parking Garage Index**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Criteria for each area are listed below

Parking Garage Index factors being assessed are Cleanliness, Parking Appearance, and Exterior Appearance

Cleanliness Parking Area / Stairwells/ Elevators

- No trash on ground
- No graffiti on walls
- Odor Free
- Garbage Cans Well-maintained
- No organic material (vomit/sand/cobwebs)

Appearance Parking Area / Stairwells / Elevators

- Signage Well-maintained
- Lighting Sufficient and all fixtures working
- No damage (leaks/rust/concrete spalling) and painted areas crisp
- Pavement stain free
- Ticket burster/payment station/exit verifier in good working condition or stairwell doors/railings or elevator doors/buttons

Appearance / Cleanliness Exterior

- Planters/grassy areas/sidewalk entrance well maintained
- Graffiti free
- No unpleasant odor
- No trash
- Signage clean and useable

## Attachment 2

### CLEANLINESS INDEX

The Public Area Cleanliness Index must be a defined set of ratings that can effectively provide an objective measurement on the cleanliness of the city.

The proposed cleanliness index is based on a 6 point scale that rates four factors that directly affect the cleanliness of the public area. The four factors are Trash/Litter, Litter/Garbage Cans, Organic Materials, and Fecal Matter. The tables beginning on the next page contains the proposed cleanliness index.

#### CLEANLINESS INDEX FOR GREENSPACE, BAYWALK, RIGHT-OF-WAYS, ACCESS AREAS, AND PARKING

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<b>1</b> <b>Extremely Clean</b>	<ul style="list-style-type: none"> <li>No litter and/or debris on entire block face.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Isolated instances of small fresh organic material, such as leaves, branches, etc., cover the <u>paved</u> area.</li> <li>No large organic material, such as tree limbs or palm fronds on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Fecal matter is not visible.</li> </ul>
<b>2</b> <b>Clean</b>	<ul style="list-style-type: none"> <li>Isolated pieces of litter on the entire assessed area. The area is not void of litter, but may contain an isolated incidence of litter.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full. There is isolated piece of trash outside of the can.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Less than 10% of a 10 step distance <u>paved</u> area is covered by small organic materials, but occurring no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>No large organic material on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Past residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter. In a 10 step distance the litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> <li>• Can is functioning, but is full with trash, which can be seen from the eye level. There is no litter above the rain guard. There is some residue from past garbage.</li> <li>• Can is in a clean condition, but may have one small isolated instance of a sticker or graffiti, which the eye is not drawn to it.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic materials is on the ground.</li> <li>• Isolated case of organic material accumulation caused by standing water and poor drainage.</li> </ul>	<ul style="list-style-type: none"> <li>• One instance of fecal matter is present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<b>4</b> <b>Somewhat Dirty</b>	<ul style="list-style-type: none"> <li>• Consistently scattered trash. In a 10 step distance the trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter occurring in no more than 10% of the entire assessed area.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the assessed area, then deduct 2 points from the rating scale.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard. In some cases, there is evidence that there is improper use by the residents.</li> <li>• Can is in a working condition, but contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic materials is on the ground.</li> <li>• 2 to 3 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• The organic material is beginning to turn brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Two instances of fecal matter are present on the public area.</li> </ul>

Index	Litter / Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
<p style="text-align: center;"><b>5</b> <b>Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash. In a 10 step distance there are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter.</li> <li>• If the litter density is occurring between 10-25% of the assessed area, then deduct 1 point from the rating scale.</li> </ul>	<ul style="list-style-type: none"> <li>• Can is full and there is trash above the rain guard and beginning to overflow since there is no room to put additional trash. There may be evidence of improper use by the residents.</li> <li>• Can has some damage, but is usable.</li> <li>• A large area of the can contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of a 10 step <u>paved</u> area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then deduct 1 point.</li> <li>• Over 10 pieces of large organic materials is on the ground.</li> <li>• 3-4 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Faint foul odor is present due to standing water.</li> <li>• The organic material has been on the ground for some time and has turned brown.</li> </ul>	<ul style="list-style-type: none"> <li>• Three instances of fecal matter are present on the public area.</li> </ul>
<p style="text-align: center;"><b>6</b> <b>Extremely Dirty</b></p>	<p>Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street.</p> <p><i>Guideline:</i> This area has been neglected for a long time and needs help. Heavy equipment will be required to clean this area. The area may also be affected due to other circumstances (i.e. nearby constructions sites, homeless activity, etc.)</p>	<ul style="list-style-type: none"> <li>• Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation.</li> <li>• Can is damaged and needs to be replaced.</li> <li>• Can is covered of items such as stickers or graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of a 10 step <u>paved</u> area is covered with organic material. The organic material has been on the ground for some time and has turned brown.</li> <li>• Over 5 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>• Strong foul odor is present due to standing water.</li> </ul>	<ul style="list-style-type: none"> <li>• Four or more instances of fecal matter are present on the public area.</li> </ul>

## CLEANLINESS INDEX FOR WATERWAYS

Index	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>1</b> <b>Extremely Clean</b></p>	<ul style="list-style-type: none"> <li>• No litter and/or debris floating on or in the water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• No or isolated instances of small fresh organic material.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>2</b> <b>Clean</b></p>	<ul style="list-style-type: none"> <li>• Isolated pieces of litter floating on or in the entire area of water and up to the high tide watermark. No signs of floating liquid.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Less than 10% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• No large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>3</b> <b>Somewhat Clean</b></p>	<ul style="list-style-type: none"> <li>• Small amount of litter including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. More than two pieces of litter and less than 5% of about a 20 sq. foot area of water up to the high tide watermark are covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• No smell is being emitted.</li> </ul> <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> <li>• Between 10% - 30% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Between 1 and 3 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

Index	Litter / Trash	Organic Materials
<p style="text-align: center;"><b>4</b> <b>Somewhat Dirty</b></p>	<ul style="list-style-type: none"> <li>• Small to moderate amounts of litter, including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 5% and 10% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• If the litter density is occurring more than 25% of the water area up to the high tide watermark, then deduct 2 points from the rating scale.</li> <li>• No extra-large pieces of litter, such as tires, grocery carts, etc.</li> <li>• Slight unnatural or foul smell is being emitted.</li> </ul> <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> <li>• Between 30% - 50% of about a 20 sq. foot area of water and up to the high tide watermark is covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water up to the high tide watermark, then deduct 1 point.</li> <li>• Between 4 and 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>
<p style="text-align: center;"><b>5</b> <b>Dirty</b></p>	<ul style="list-style-type: none"> <li>• Consistent accumulation of trash including floating liquids, such as oil. This includes litter floating on the water or in the water and up to the high tide watermark. Between 10% and 25% of about a 20 sq. foot area of water up to the high tide watermark is covered by litter, but occurring in no more than 10% of the entire water area up to the high tide watermark being assessed.</li> <li>• If the litter density is occurring between 10-25% of the water area up to the high tide watermark, then deduct 1 point from the rating scale.</li> <li>• One extra-large piece of litter, such as a tire, a grocery cart, etc.</li> <li>• Strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 50% of about a 20 sq. foot area of water and up to the high tide watermark are covered by organic material, but occurring in no more than 10% of the entire water area up to the high tide watermark. If occurring in more than 10% of the entire water area up to the high tide watermark, then deduct 1 point.</li> <li>• Over 10 pieces of large organic material, such as tree limbs or palm fronds in the water and up to the high tide watermark.</li> </ul>

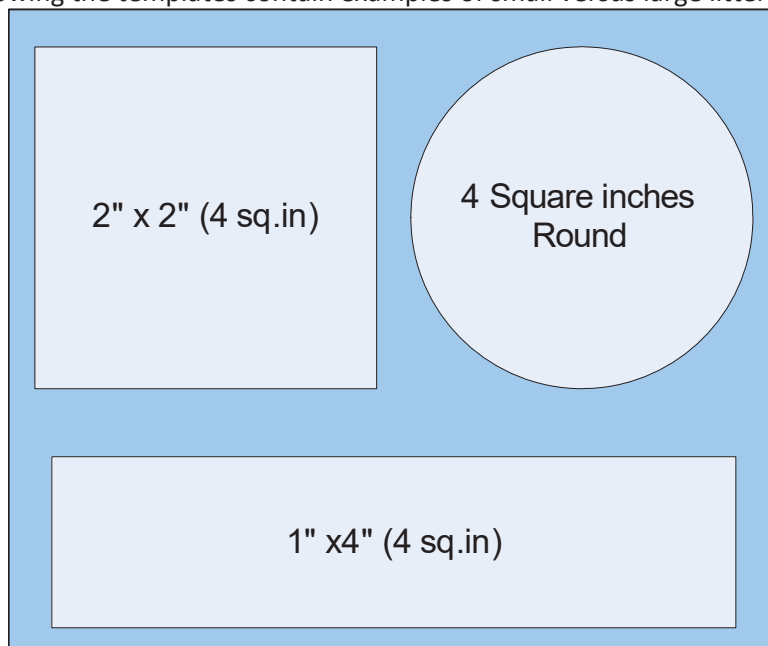


Index	Litter / Trash	Organic Materials
<b>6</b> <b>Extremely</b> <b>Dirty</b>	<ul style="list-style-type: none"> <li>• Large accumulation of litter and trash including floating liquids, such as oil. Over 25% of about a 20 sq. foot area of water area up to the high tide watermark are covered by litter. This includes litter floating on the water or in the water and up to the high tide watermark. There may be evidence of illegal dumping.</li> <li>• Two or more extra-large pieces of litter, such as tires, a grocery carts, etc.</li> <li>• Very strong unnatural or foul smell is being emitted.</li> </ul>	<ul style="list-style-type: none"> <li>• 90-100% of the water and up to the high tide watermark is covered by organic material.</li> </ul>

The cleanliness index makes references to small and large litter, which can directly affect the cleanliness score of a public area. The definition used to distinguish the difference between small and large litter came from the Florida Center for Solid and Hazardous Waste Management (the Center). Each year the Center conducts a roadside litter survey for the State of Florida and is funded through the Florida Department of Environmental Protection (FDEP). Starting in 1993, the Florida Legislature designated the Center and funded the litter survey to measure progress toward the state’s litter reduction goal as defined in the Solid Waste Management Act.

Using the Center’s definition for litter, items or pieces of items four square inches or larger in size are classified as “large litter,” and items or pieces of items under four square inches are classified as “small litter.” As a reference, the figure below contains three templates of 4 square inch areas in a rectangle, square, and round shape are depicted in the figure below. If the litter fits in any of these areas, then it is considered small litter. If the litter is too big to fit in any of these areas, then it is considered large litter.

The two tables following the templates contain examples of small versus large litter or trash.



Templates for Small Litter Distinctions

Examples of Small Litter: Cigarette butts, Bottle caps, Straws, Candy packaging and wrappers, Polyfoam packing materials, Plastic espresso coffee cups

Examples of Large Litter: Beer cans, Beer bottles, Soft drink (glass), Soft drink (cans), Soft drink (plastic), Sport drink (glass), Sport drink (plastic), Wine / Liquor (glass), Wine / Liquor (plastic/other), Milk / Juice (Plastic), Milk / Juice (Glass), Six pack plastic rings, Plastic drink cups, Paper Cups (Hot), Paper Cups (Cold), Polystyrene cups (foam), Cup lids, Plastic retail bags, Paper retail bags, Paper bags – fast food, Plastic bags – not retail, Paper bags – not retail. Zipper bags /sandwich bags, Cardboard boxes, Paperboard (cereal type), Paper beverage cases, Plastic jars / bottles/ lids, Glass jars / bottles misc., Cans – steel,, Cans – aluminum, Aerosol cans, Paper food wrap, Utensils, Napkins, Paper fast food plates, Poly fast food plates, Clothing, Printed materials (newspapers, flyers, books, etc.)

**Attachment 3**  
**RESTROOM INDEX**

Each factor must meet defined criteria to be considered extremely well maintained. As criteria are not met per each factor individually, the scale adjusts.

A six point scale will be used for each factor below separately as follows:

- 1- Extremely Well Maintained (all criteria for individual factor met)
- 2- Well Maintained (Missing 1)
- 3- Maintained (Missing 2)
- 4- Somewhat maintained (Missing 3)
- 5- Poorly maintained (Missing 4)
- 6- Not maintained (Missing 5)

Criteria for each area are listed below

Restroom Index factors being assessed are Toilet Areas, Appearance Sink Area, Appearance Interior, and Exterior Appearance

**Cleanliness Toilet Area**

- Floors mopped/clean/no stains
- Toilets/urinal clean/no litter visible/ no leaks
- No unpleasant odor
- Toilet paper unavailable/usable
- No graffiti

**Cleanliness Sink Area**

- Floors mopped/clean/no stains
- Sink and/or mirror clean/no leaks
- Trash can no more than  $\frac{3}{4}$  full
- Walls clean/no graffiti
- Soap dispenser clean

**Appearance Interior**

- Stable/operable toilet/urinal partition enclosures
- Stall doors rust free/fully painted/latch and hinge functional
- Sink faucets and soap dispenser functional
- Hand dryer or paper dispenser functional
- All interior lights functional

**Appearance / Cleanliness Exterior**

- Signage visible and clean
- No graffiti
- No unpleasant odor
- No trash/litter
- Entrance door rust free/fully painted/functional (rollup or traditional)

**EXHIBIT “L”**  
**Construction Agreement Required Clauses**

(a) The City shall be named as an additional insured on all insurance required by such Construction Agreement and under which the Lessee is an additional or named insured.

(b) The Construction Agreement shall contain usual and customary warranties by the Contractor in favor of the Lessee and the City (including a warranty against defective workmanship) for a period of not less than one year following substantial completion of the Project or applicable portion thereof.

## **SCHEDULE 1-A**

### **Legal Description of Area 1**

All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida

LESS AND EXCEPT A maximum of 0.3 acres of the following described land to consist of the to-be-designed lobby and ancillary areas of the residential portion of the Project: All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida, TOGETHER WITH air space above such Lots to the extent required for the 275,000 square foot residential improvements to be constructed therein.

The proposed design of the project to be developed by Developer and Residential Developer pursuant to the Development Agreement will evolve through the design development process and accordingly, the initial legal description of the Residential Parcel will be preliminary in nature. The initial legal description will be consistent with the limitations contained in the Air Rights Parcel PSA and, in accordance with the Development Agreement, shall be sufficient to accommodate the design development for the residential portion of such project and will thereafter be revised to conform to the updated and actual legal description thereof following receipt of all Governmental Approvals for such project and following completion of such project in accordance with the Development Agreement.

## SCHEDULE 1-B

### Legal Description of Area 2

A portion of sovereignty submerged land in Section 03, Township 54 South, Range 42 East, in Biscayne Bay, Miami-Dade County, containing 1,648,937 square feet, more or less, as more particularly described as follows:

A portion of land lying West of and adjacent to Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, at Page 81, of the Public Records of Miami-Dade County, Florida, more particularly described as follows:

Commence at the Northwest corner of Section 3, Township 54 South, Range 42 East; Thence run Easterly along the North line of said Section 3 for 1,350.00 feet, more or less, to a point on the East line of Block 90 of the aforementioned Plat; Thence run South 00°30'00" E along the East line of Blocks 90, 89, 88, 87, 86, 85, 84, 83, 82, 81, 80, 79 and a portion of Block 111 and along their Southerly extensions for 5,207.00 feet to the Southeast corner of Lot 1, Block 111 of said Subdivision; Thence run S 89°05'00" W, along the South line of said Lot 1, Block 111 for 260.00 feet to a point on the East water line of Biscayne Bay, said point also being the POINT OF BEGINNING of the Tract of land hereinafter described; Thence run N 32°12' 16" W, along a line 300.00 feet West of and parallel with the Westerly right of way line of Alton Road for 2,159.28 feet to a point, Thence run N 28°29'08" W for 323.93 feet to an intersection with a line that is 35.00 feet Northerly of and parallel with the North line of a lot designated 49 B as shown on the AMENDED PLAT OF LOTS 43 TO 50, BLOCK 111, OCEAN BEACH, FLA., ADDITION NO. 3, as recorded in Plat Book 14, at Page 70, of the Public Records of Miami-Dade County, Florida; Thence run N 88°07'28" W for 35.69 feet; Thence run S 57°47'44" W for 254.60 feet; Thence run N 32°12'16" W for 20.00 feet; Thence run S 57°47'44" W for 300.00 feet to a point; Thence run S 32°12' 16" E for 1,154.00 feet to a point; Thence run S 57°47'44" W for 150.00 feet to a point; Thence run S 32°12' 16" E for 500.00 feet to a point; Thence run N 57°47'44" E for 150.00 feet to a point; Thence run S 32°12' 16" E for 912.00 feet to a point; Thence run S 67°48'22" E for 347.79 feet to a point; Thence run N 57°47'44" E for 360.62 feet, more or less, to other lands of The City of Miami Beach; Thence run N 32°11 '37" W for 326.25 feet, more or less, by other lands of The City of Miami Beach, to the POINT OF BEGINNING.

**SCHEDULE 2**  
**SAMPLE CALCULATION OF RENT INCREASES**  
**(FOR ILLUSTRATIVE PURPOSES ONLY)**

Sample Calculation of Additional Rent Payable in Connection with Submerged Land Lease (all numbers and calculations set forth below are merely for illustration and are not actual numbers or required payments under this Lease)

Rent due in connection with the Submerged Land Lease for the year 2020 is \$200,000

CPI growth from 2020 to 2053 equals \$300,000, and therefore, total rent due in connection with Submerged Lands Lease is \$500,000

Projected rent due in connection with the Submerged Land Lease for the year 2053 is \$2,000,000, then:

Lessee would owe City additional rent in the amount of \$750,000 for the year 2053 ( $\$2,000,000$  minus  $\$500,000$  divided by 2). The cap is \$750,000 so the amount here does not exceed the cap.

If CPI is 3% then the calculation would continue as set forth below:

Rent due in connection with the Submerged Land Lease for the year 2054 is \$2,000,000.

Lessee would owe City additional rent in the amount of \$742,500 ( $\$2,000,000$  -  $\$515,000$  ( $\$500,000 + \text{CPI}$ ) divided by 2)

If 2054 rent due in connection with the Submerged Land Lease was \$2,500,000 then the calculation would be  $\$2,500,000$  minus  $\$515,000$  ( $\$500,000 + \text{CPI}$ ) divided by 2 which equals \$992,500. However the cap would be \$772,500 ( $\$750,000 + \text{CPI}$ ) so Lessee would owe City additional rent in the amount of \$772,500.