

CITY OF MIAMI BEACH
a Florida municipal corporation

Lessor

and

MIAMI BEACH WATERSPORTS CENTER, INC.
a Florida corporation not-for-profit

Lessee

SECOND AMENDED AND RESTATED/CONSOLIDATED LEASE

July 10, 2002

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
I.	DEMISE BY LESSOR	3
	Paragraph 1.1 Lease of Property	3
	Paragraph 1.1.1 Parcel "A" Legal Description.....	4
	Paragraph 1.1.2 Parcel "B" Legal Description.....	4
II.	DURATION AND TERM	4
III.	AMOUNT OF RENT	4
IV.	USE AND POSSESSION OF DEMISED PREMISES	5
	Paragraph 4.1 Permitted uses defined	5
	Paragraph 4.2 Goals and Priorities	6
	Paragraph 4.3 Operation and Management of the Watersport Center	6
V.	TERMINATION OF PRIOR AGREEMENTS	7
VI.	NET LEASE.....	7
VII.	PROVISIONS REGARDING PAYMENT OF TAXES	8
	Paragraph 7.1 Lessee Pays All Taxes	8
	Paragraph 7.2 Contesting Tax Validity.....	9
	Paragraph 7.3 Failure or Refusal to Pay Tax.....	10
	Paragraph 7.4 Proration.....	10
VIII.	LESSOR'S INTEREST NOT SUBJECT TO MECHANIC'S OR MATERIALMEN'S LIENS	11
	Paragraph 8.1 Notice to Third-Parties Regarding Liens	11
	Paragraph 8.2 Releasing and Discharging Liens	11
	Paragraph 8.3 Leasehold Mortgage.....	12
IX.	LESSOR'S RIGHTS AND REMEDIES	13
	Paragraph 9.1 Landlord-Tenant Relationship	13
	Paragraph 9.2 All Rights and Remedies	13
	Paragraph 9.3 Rights and Remedies Cumulative	14
X.	INDEMNIFICATION OF LESSOR AGAINST LIABILITY	14
	Paragraph 10.1 Indemnification Clause	14
	Paragraph 10.2 Commercial General Liability Policies	14
	Paragraph 10.3 Indemnification Clause For Lease Challenges.....	15
	Paragraph 10.4 Compliance With All Laws, Etc	16
	Paragraph 10.4.1 Rules On Hazardous Materials	16
	Paragraph 10.4.2 Hazardous Materials Defined	17
	Paragraph 10.4.3 Further Disclosure of Hazardous Materials	18

	Paragraph 10.4.4	Lessor's Right to Inspect.....	18
	Paragraph 10.4.5	Default.....	18
	Paragraph 10.4.6	Lessee Receives Property "As Is"	19
XI.	FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS.....		19
	Paragraph 11.1	Property All Risk Coverage Policies	19
	Paragraph 11.2	Builders' Risk Insurance Policies	19
	Paragraph 11.3	Use Of Insurance Proceeds	20
	Paragraph 11.4	Financing of Premiums	21
	Paragraph 11.5	Default After Casualty	21
	Paragraph 11.6	Excess Insurance Proceeds.....	22
XII.	LESSEE'S DUTY TO PAY INSURANCE PREMIUMS		23
	Paragraph 12.1	Obligation and Proof of Payment	23
	Paragraph 12.2	Lessor's Option to Pay	23
XIII.	ASSIGNMENT.....		24
	Paragraph 13.1	Right and Conditions of Assignments	24
	Paragraph 13.2	Notice and Approval.....	24
	Paragraph 13.3	Transfers or Assignment By Leasehold Mortgagee	25
XIV.	CONDEMNATION CLAUSE.....		25
	Paragraph 14.1	Division of Condemnation Proceeds	25
	Paragraph 14.2	Lessee's Improvements	26
	Paragraph 14.3	Taking Rendering Premises Unsuitable for Permitted Uses	26
XV.	ADDITIONAL IMPROVEMENTS.....		26
	Paragraph 15.1	Proposed Improvements	26
	Paragraph 15.2	Lessee's Responsibility for Design and Approvals.....	27
	Paragraph 15.3	Preliminary Plans and Specifications	27
	Paragraph 15.4	Public Facilities and Concurrency	28
	Paragraph 15.5	Construction Plans and Specifications	28
	Paragraph 15.6	Conditions Precedent to Lessees Commencement of Construction of Proposed Improvements	29
	Paragraph 15.7	Lessor's Cooperation in Obtaining Approvals	30
	Paragraph 15.8	Commencement of Construction of Proposed Improvements.....	30
	Paragraph 15.8.1	Unavoidable Delays	31
	Paragraph 15.9	Completion of Construction of Proposed Improvements....	32
	Paragraph 15.10	Licensed Architects and Engineers	34
	Paragraph 15.11	Construction Cost Certification.....	34
	Paragraph 15.12	Completion Bond.....	34
	Paragraph 15.13	Diligence in Construction.....	34
XVI.	DEED RESTRICTIONS CONCERNING THE USE OF THE PROPERTY		35
	Paragraph 16.1	Restrictions	35
	Paragraph 16.2	Violation of Restriction is Event of Default	36

XVII.	DEFAULT CLAUSE.....	36
	Paragraph 17.1 Event of Default.....	36
	Paragraph 17.2 Statutory Landlord - Tenant Proceedings Apply.....	37
	Paragraph 17.3 Thirty Day Cure Period.....	37
	Paragraph 17.4 Lessor's Other Remedies.....	38
	Paragraph 17.5 Liquidated Damages	38
	Paragraph 17.6 Receiver	39
XVIII.	LESSEE'S DUTY TO KEEP PREMISES IN GOOD REPAIR	39
	Paragraph 18.1 Lessee's Covenant Regarding Maintenance and Repair	39
	Paragraph 18.2 Lessee's Covenant Regarding Utilities.....	39
XIX.	DEMOLITION CLAUSE.....	40
	Paragraph 19.1 Lessee's Right to Demolish Conditioned.....	40
	Paragraph 19.2 Value of Reconstruction	40
	Paragraph 19.3 Expense of Demolition and Right to Salvage	40
XX.	ADDITIONAL COVENANTS OF THE LESSEE	41
	Paragraph 20.1 Destruction or Casualty No Entitlement to Termination	41
	Paragraph 20.2 No Subordination of Lessor's Title	41
	Paragraph 20.3 Covenant Regarding Surrender	41
	Paragraph 20.4 Further Covenant Regarding Encumbrances	41
XXI.	COVENANT OF QUIET ENJOYMENT	42
XXII.	LESSOR'S RIGHT OF ENTRY	42
XXIII.	NO REPRESENTATIONS BY LESSOR	42
XXIV.	LESSEE TO COMPLY WITH ALL LAWS	43
	Paragraph 24.1 Lessee's Compliance With All Laws	43
	Paragraph 24.2 Lessee's Obligation to Pay Fines, Etc.....	43
	Paragraph 24.3 No Discrimination Clause	43
XXV.	SURRENDER OF THE PREMISES	43
	Paragraph 25.1 Surrender of the Premises	43
	Paragraph 25.2 No Subleases, Etc.....	44
XXVI.	FORCE MAJEURE.....	44
XXVII.	MISCELLANEOUS PROVISIONS	45
	Paragraph 27.1 Grace Periods Run Concurrently	45
	Paragraph 27.2 Arrearages	45
	Paragraph 27.3 Landlord-Tenant Relationship Regarding Collections	45
	Paragraph 27.4 Lessor's Remedies Not Otherwise Provided	45
	Paragraph 27.5 Receivers	46

Paragraph 27.6	Cooperation.....	46
Paragraph 27.7	Captions	46
Paragraph 27.8	Index	46
Paragraph 27.9	Laws of Florida Apply	47
Paragraph 27.10	Covenants Running With the Land	47
Paragraph 27.11	Time Is of The Essence	47
Paragraph 27.12	Notice	47
Paragraph 27.13	Attorneys' Fees	48
Paragraph 27.14	Venue	48
Paragraph 27.15	Lessor's Limitation on Liability.....	49
Paragraph 27.16	Recording in the Public Records	49
Signature Page	.....	50
Notary Page	.....	51
Exhibit "A"	.....	52
Exhibit "B"	.....	53
Exhibit "C"	.....	54
Exhibit "D"	.....	55

SECOND AMENDED AND RESTATED/CONSOLIDATED LEASE

THIS INDENTURE (the "Lease"), made and entered into at Miami Beach, Miami-Dade County, Florida, this 10th day of July, 2002, by and between:

CITY OF MIAMI BEACH,
a Florida municipal corporation
(hereinafter referred to as "Lessor")

and

MIAMI BEACH WATERSPORTS CENTER, INC.
a Florida not-for-profit corporation
(hereinafter referred to as "Lessee")

WITNESSETH:

WHEREAS, the Lessor is the owner of a certain parcel of land with parking lot facilities, currently zoned as "GU", located at 65th Street and Indian Creek Drive, Miami Beach, Florida; and

WHEREAS, on December 14, 1988, Lessor and Miami Beach Jewish Community Center, Inc. (JCC), a not-for-profit corporation, entered into a Lease Agreement for the use of a portion of the property located at 65th Street and Indian Creek Drive, herein below referred to as Parcel "A", to construct, operate, and maintain a rowing facility, at the JCC's sole cost and expense; and

WHEREAS, on November 21, 1989, Lessor and the JCC entered into a First Amendment to the Lease Agreement which had the effect of enlarging the leased premises on Parcel "A"; and

WHEREAS, on February 20, 1991, the Mayor and City Commission adopted Resolution No. 91-20246, whereby it agreed to appropriate and disburse a matching

contribution, in the amount of \$225,000.00, toward construction of additional improvements for the rowing facility under the Lease Agreement; and

WHEREAS, on November 20, 1991, Lessor and the JCC entered into an Amended and Restated Lease Agreement primarily for the purpose of extending the term of the Lease and making other changes relative to securing the City's matching contribution toward the timely construction of improvements at the rowing facility; and

WHEREAS, under the Amended and Restated Lease Agreement, the Lease contains an initial term for a period of twenty (20) years, having commenced on May 22, 1991, and terminating on May 21, 2011; provided the Lease is not otherwise in default, the Lease is renewable for one additional term of ten (10) years; and

WHEREAS, on April 17, 1996, the Mayor and City Commission adopted Resolution No. 96-21955, approving an Assignment of Lease, assigning all interest in the foregoing Amended and Restated Lease Agreement from the JCC to Miami Beach Watersports Center, Inc., as Lessee; and

WHEREAS, Miami Beach Watersports Center, Inc., as the current Lessee, has approached the City with its intent to commence, at its sole cost and expense, extensive capital improvements to the existing building on the leased premises on Parcel "A", consisting of a second story thereto for meeting and conference space, as well as a proposal to lease and make capital improvements, consisting of the construction of a dry dock facility, on an additional parcel of land adjacent to Parcel "A" and on the property located at 65th Street and Indian Creek Drive, herein below referred to as Parcel "B"; and

WHEREAS, accordingly, Miami Beach Watersports Center, Inc. has also requested that, as to its existing Amended and Restated Lease Agreement, the Mayor and City Commission approve the exercise of the additional ten (10) year option for Parcel "A", and also approve a new Lease Agreement for Parcel "B"; said term to run concurrent with the full term on the Amended and Restated Lease Agreement on May 21, 2021; and

WHEREAS, the Administration and City Attorney's Office have determined that this may be effectively accomplished through approval and execution of the attached Second Amended and Restated/Consolidated Lease Agreement between the City, as Lessor, and Miami Beach Watersports Center, Inc., as Lessee; said Second Amended and

Restated/Consolidated Lease Agreement having the purpose of consolidating, in one document, the terms and conditions, as well as the proposed improvements, to the existing facility on Parcel "A" (the premises currently governed under the Amended and Restated Lease Agreement, dated November 20, 1991), and the new premises on Parcel "B", on which Lessee contemplates additional proposed improvements (the dry dock facility); and

WHEREAS, notwithstanding the consolidation (for the existing facilities on Parcel "A" and the new improvements on Parcel "B") into one document, the resulting Second Amended and Restated/Consolidated Lease Agreement would not have the effect of extending Lessee's term beyond that currently provided in the Amended and Restated Lease of November 20, 1991; and

WHEREAS, additionally, as the Second Amended and Restated/Consolidated Lease Agreement shall also include Parcel "B", the term for same shall not extend beyond the date of expiration of the existing November 21, 1991 Agreement, including the renewal term therein, of May 21, 2021.

NOW THEREFORE, the Lessor and the Lessee, for and in consideration of the mutual covenants, agreements and undertakings herein contained, and in further consideration of the payments herein mentioned, made and to be made, do by these presents mutually covenant and agree as follows:

ARTICLE I - DEMISE BY LESSOR

1.1 LEASE OF PROPERTY.

Upon the terms and conditions herein stated, and in consideration of the payment from time to time of the rents herein stated, and for and in consideration of the prompt performance by the Lessee of all of the covenants hereinafter contained by the Lessee to be kept and performed, the performance of which are declared to be an integral part of the consideration to be furnished by the Lessee, the Lessor does hereby lease, let and demise unto the Lessee, and the Lessee does hereby lease of and from the Lessor, the following described property situate, lying and being in Miami-Dade County, Florida, together with all buildings and other improvements

located thereon, to-wit:

1.1.1 Parcel "A" Legal Description – **Exhibit "A"**

1.1.2 Parcel "B" Legal Description – **Exhibit "B"**

subject to the following:

- (a) Conditions, restrictions and limitations, now appearing of record;
- (b) City and/or County Zoning Ordinances now existing, or which may hereafter exist during the life of this lease;
- (c) All matters shown on the Boundary Survey;
- (d) All of the terms, covenants and conditions contained in this Lease.

Parcel "A" and Parcel "B" shall, collectively, be hereinafter sometimes referred to as either the "Demised Premises", "Premises", "Property", the "Rowing Facility", or the "Facility". The Property, and the respective delineations of Parcel "A" and Parcel "B" therein, is specifically delineated in the survey attached and incorporated as **Exhibit "C"**.

ARTICLE II - DURATION AND TERM

The duration and term of this Lease shall be for a period of eighteen (18) years, nine (9) months, and twenty one (21) days, commencing on the 1st day of August, 2002 (the "Commencement Date"), and expiring on the 21st day of May, 2021 (the "Maturity Date"). Lessor and Lessee herein acknowledge that the Term provided herein in no way extends or otherwise goes beyond the date of Lessee's option term, as previously provided in the Amended and Restated Lease Agreement, dated November 20, 1991.

ARTICLE III - AMOUNT OF RENT

The Lessee covenants and agrees to pay to the Lessor an annual rental of Ten Dollars (\$10.00), payable annually in advance, the first such annual payment being due and payable on the 1st day of August, 2002, and on the 1st day of August each and every year thereafter during the entire term of the Lease.

ARTICLE IV - USE AND POSSESSION OF DEMISED PREMISES

4.1 PERMITTED USES DEFINED.

The Demised Premises shall be used by the Lessee solely and exclusively for the continued operation and maintenance of a Rowing Facility, and any and all activities related thereto, as well as construction of new improvements to the Facility. Said improvements shall include, respectively, the construction of a second story on the building currently located on Parcel "A" and the construction of a new building on Parcel "B" to replace the temporary structure currently located thereon, for a dry dock facility (hereinafter collectively referred to as the Rowing Facility or the Facility). Lessee shall at all times be responsible for operation and maintenance of the Rowing Facility, and the Facility shall be open to the general public, provided that users shall meet the minimum safety requirements of the United States Rowing Association and the operational requirements of Lessee, as same shall be submitted to Lessor for Lessor's approval. The Rowing Facility shall not be used as a restaurant or bar; however, there may be catered events (e.g. picnic, barbeque, dinner, luncheon, etc.), conferences and meetings. In the event that Lessee uses the Premises for any purposes not expressly permitted herein, such use shall be considered an Event of Default and the Lessor shall be entitled to all the remedies set forth in Article XVII hereof, or without notice to Lessee, restrain such improper use by injunction or other legal action.

Lessee may conduct other activities normally conducted by similar public rowing facilities on the Property, if approved by the City Manager, or, at the Manager's option and discretion, by the City Commission. Additional uses not specifically enumerated above may be approved by the City Commission. In the event uses are introduced to the Property that are deemed to be nonconforming because such uses do not fall within the above list of permitted uses, and were introduced by the Lessee without City Manager and/or City Commission approval as provided for above, the Lessor may give Lessee notice of default in accordance with Article XVII, unless the Lessee terminates such uses until it obtains the required City Manager

and/or City Commission approval. Failure of Lessee to terminate such nonconforming uses and request City Manager and/or City Commission approval for such use within thirty (30) days after notice as provided for herein, unless Lessee decides to abandon such nonconforming uses, shall entitle Lessor to pursue the termination of this Lease as provided for elsewhere in this Lease.

Subject to the terms of this Agreement, the Lessee shall have the primary use and sole occupation of the Demised Premises and shall be responsible for its management and maintenance.

4.2 GOAL AND PRIORITIES.

The Rowing Facility shall at all times be operated, maintained, and managed as a multi-purpose community resource centered on an outstanding waterway which provides:

- Enjoyment of the beautiful Indian Creek Waterway
- Education for children and adults
- A unique and enjoyable venue for rowing and other watersport related activities, special events, receptions, and community meetings
- A catalyst for community promotion of its waterway usage, and enhancement of rowing-related water recreational education programs
- A popular and memorable destination for rowing enthusiasts

Lessor and the Lessee intend that the activities programmed in and pertaining to the Rowing Facility continuously increase in scope and number so that the Facility favorably impacts an increasing number of residents and visitors.

4.3 OPERATION AND MANAGEMENT OF THE WATERSPORT CENTER.

All activities undertaken at the Rowing Facility shall be to advance the purposes set forth in Paragraph 4.2 above. Subject to the terms, limitations and required approvals contained in this Agreement, Lessee shall:

- (a) Manage, operate, maintain and direct the operations and activities of the

Rowing Facility;

- (b) Maintain the Property, and all improvements thereto, including but not limited to, the building, dry dock facility, seawall, docks and piers;
- (c) Develop and implement programs and activities which support and promote the purposes set forth in Paragraph 4.2; and schedule public use of the Demised Premises pursuant to operating policies and procedures consistent with those to be submitted by Lessee and approved by Lessor pursuant to Paragraph 4.1, which shall include all fees to be charged, as same shall be approved by Lessor, reflecting the reasonable expense of allowing such use, including but not limited to the development and implementation of educational programs and reduced rates for City of Miami Beach residents, as mutually agreed upon by the City and Lessee. The City shall have the right to use the Demised Premises, including but not limited to the meeting and conference rooms, on a space available basis, at no charge. Duly constituted rowing clubs with membership primarily situated in the City of Miami Beach shall also have the right to use the Rowing Facility at reduced rates. With regard to this Subsection (c), the City reserves the right, at its option and discretion, to evaluate Lessee's programs and activities, as well as fees to be charged, throughout the term of this Lease but, in any event, no more than annually during any given lease year herein.

ARTICLE V - TERMINATION OF PRIOR AGREEMENTS

Upon execution of this Lease all prior agreements between the parties hereto, including but not limited to the Amended and Restated Lease Agreement, dated November 20, 1991 (collectively the Prior Agreements), are hereby terminated and shall be of no further force or effect, except that liabilities or obligations arising under the Prior Agreements shall continue to be binding on the Lessee under this Lease.

ARTICLE VI - NET LEASE

Lessee shall pay to the Lessor absolutely net throughout the term of this Lease, 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 Lessor 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 Premises, except as otherwise specifically stated in this Lease; and the Lessee agrees to pay all costs and expenses of every kind and nature whatsoever arising out of or in connection with the Premises that may arise or become due during the term of this Lease.

ARTICLE VII - PROVISIONS REGARDING PAYMENT OF TAXES

7.1 LESSEE PAYS ALL TAXES.

Lessee covenants and agrees with Lessor that as a further consideration for the making of this Lease, the Lessee is obligated to and will pay all taxes levied or assessed at any or all times for and after the year in which the Commencement Date occurs, and during the term hereby demised, by any and all taxing authorities, and including not only ad valorem and personal property taxes, but also special assessments and liens for public improvements, and including in general all taxes, sales taxes, tax liens, or liens in the nature of taxes which may be assessed, levied or imposed against the Demised Premises or this Lease, including the land and all buildings, (and such personal property by way of furnishings or equipment which the Lessee has or may bring upon or be obligated to bring upon the Property), during the term of this Lease or any of the Prior Agreements; but in the event any of these taxes and assessments are payable according to their terms in installments, then the Lessee shall have the right to pay the same as such installments fall due, provided that the Lessee must effect payment of these taxes not later than thirty (30) days before the time when the nonpayment thereof would render them delinquent. The parties agree that in the event any special assessments are payable in installments, the Lessee shall be responsible for such installments during

the term of this Lease, and may pay such sums in installments, and the Lessor shall be responsible for any such assessments extending beyond the term of this Lease.

7.2 CONTESTING TAX VALIDITY.

If Lessee desires to contest the validity of any tax or tax claim, Lessee may do so without being in default hereunder as to its obligation to pay taxes, provided Lessee gives Lessor written notice of its intention to do so and furnishes Lessor with a bond from a corporate surety qualified to do business in the State of Florida, in one and one-half times the amount of the tax item or items intended to be contested, conditioned to pay the tax or tax items when the validity thereof shall finally have been determined, which written notice and bond shall be given by Lessee to Lessor not later than a day which is thirty (30) days before the tax item or items proposed to be contested would otherwise become delinquent. If prior to the giving of such bond, Lessee shall have paid into the Registry of a court of competent jurisdiction a sum of money to pay or apply on the payment of such taxes, and if such money is so paid into the Registry of the Court that it may never be withdrawn excepting for its application upon the payment of the contested taxes without the consent in writing of the Lessor hereunder first had and obtained, then the amount of the bond required by the terms of this paragraph may be diminished by the amount so paid into the Registry of the Court. If there shall have been paid into the Registry of the Court in the manner prescribed hereinabove a sum equal to one and one-half times the amount of the tax being contested, then no bond, as otherwise provided for in this Article, need be given by Lessee to Lessor. None of the provisions of this Paragraph 7.2 shall be available to Lessee unless and until the enforcement of the contested tax, whether by way of issuance of Tax Certificates, Tax Deed, reversion to the taxing authority, or otherwise, is fully enjoined by a court of competent jurisdiction or is otherwise effectively stayed not later than a day which is thirty (30) days before the particular tax item or items proposed to be contested shall become delinquent; if such injunction or other stay is not secured by Lessee within that time, then the Lessor is authorized as provided for in Paragraph 7.3 of this Article VII, to

pay such taxes as then assessed and levied, notwithstanding any pending or proposed suit to contest those taxes.

7.3 FAILURE OR REFUSAL TO PAY TAX.

In the event the Lessee shall for any reason fail, refuse or neglect to pay any taxes referred to in Paragraph 7.1 of this Article VII within the time specified therein, or if the Lessee desires to contest, or by suit contests any such tax, but for any reason fails, refuses or neglects to comply with the provisions of Paragraph 7.2 of this Article VII within the time therein specified, then and in any such event, the Lessor may at its option pay such taxes as then assessed and levied and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which may have been reasonably incurred in connection with such payments or by reason of the nonpayment thereof by the Lessee, together with interest on all such amounts at the rate of ten per cent (10%) per annum from the date of payment, shall be repaid by the Lessee to the Lessor and the payment thereof may be collected or enforced by Lessor in the same manner as though such amounts were an installment of rent specifically required by the terms of this Lease to be paid by Lessee unto Lessor; but the payment of any such taxes by the Lessor shall not waive the default thus committed by the Lessee.

7.4 PRORATION.

Notwithstanding the foregoing, taxes (after deducting all available discounts if utilized) for the last year of the term of this Lease occurs, will be prorated as of the Termination Date of the term of this Lease, Lessee paying such taxes for that portion of the termination year preceding the date of termination of this Lease, and Lessor paying the balance of such taxes for such year, if any.

**ARTICLE VIII - LESSOR'S INTEREST NOT SUBJECT TO MECHANICS' OR
MATERIALMEN'S LIENS**

8.1 NOTICE TO THIRD PARTIES REGARDING LIENS.

All persons and parties, corporate and otherwise, are hereby notified of the fact that the Lessee does not and shall never under any circumstances have the power, right or authority to subject any interest of the Lessor in the Demised Premises to any mechanics' or materialmen's liens or liens of any other kind or nature; and all persons dealing with the Lessee are hereby notified of the fact that they must look only to the interest of the Lessee in the Demised Premises and not to any interest of the Lessor.

8.2 RELEASING AND DISCHARGING LIENS.

Lessee covenants and agrees with Lessor that Lessee will not permit or suffer to be filed or claimed against the interest of the Lessor or the Lessee in the Demised Premises during the continuance of this Lease any lien or claim of any kind, and if any such lien is claimed or filed it shall be the obligation of the Lessee, within thirty (30) days after the lien or claim shall have been filed among the Public Records of Miami-Dade County, Florida, or within thirty (30) days after the Lessor shall have been given notice of any such lien or claim and shall have transmitted written notice of the receipt of notice of such lien or claim unto the Lessee (whichever thirty (30) day period expires earlier), to cause the Demised Premises to be released and discharged from such lien or claim, either by payment into court of the amount necessary to relieve, release and discharge the Demised Premises from such lien or claim, or in any other manner that as a matter of law will result, within the period of thirty (30) days, in releasing and discharging the Lessor and the title of the Lessor from such lien or claim; and Lessee covenants and agrees, within the period of thirty (30) days, so to cause the Demised Premises and the Lessor's interests therein to be released from the legal effect of every such lien or claim.

8.3 LEASEHOLD MORTGAGE.

Notwithstanding the foregoing paragraph 8.2, Lessee may encumber the Property with a leasehold mortgage as follows. Lessor agrees to execute a non-disturbance agreement (containing language reasonably acceptable to the Lessor) for the benefit of Lessee and the holder of any leasehold mortgage (the "Leasehold Mortgage") and to cooperate with Lessee's efforts to obtain financing, including the execution of any necessary documents, so long as such documents are subject to the reasonable approval of the Lessor's attorney. No leasehold mortgage shall be valid or of any force or effect unless and until Lessor has consented thereto in writing (which consent shall be conditioned upon Lessee's compliance with this Paragraph 8.3) and a true copy of the original of each instrument creating and effecting such mortgage, certified by Lessee to be a true copy of such instrument, together with written notice containing the name and post office address of the Leasehold Mortgagee, has been delivered to the Lessee. Further, the Leasehold Mortgage shall specifically provide:

- (a) That the Leasehold Mortgage is subject to all of the terms, covenants and conditions of this Lease;
- (b) That the Leasehold Mortgage encumbers only the Lessee's interest created by this Lease in the Property and the Building;
- (c) That the rights of the Lessor pursuant to this Lease will not be affected by the terms of the Leasehold Mortgage;
- (d) That the holder of the Leasehold Mortgage shall waive all right and option to obtain and apply proceeds of any insurance or the proceeds of any condemnation award toward payment of the sums secured by the Leasehold Mortgage to the extent such proceeds are required by the terms of this Lease for the demolition, repair or restoration of the Property;
- (e) That the holder of the Leasehold Mortgage shall agree to send Lessor copies of all notices to Lessee in which such mortgagee claims that there exists one or more uncured defaults under the terms and provisions of the Leasehold Mortgage, such notices to be sent simultaneously to Lessor and Lessee;

- (f) That the Leasehold Mortgage is a leasehold mortgage only and that such mortgage has obtained no interest whatsoever in the underlying fee of the Land as a result of the execution of the Leasehold Mortgage by Lessee;
- (g) Only the Leasehold Mortgagee may acquire any right, title or interest in or to this Lease, by acceptance of a deed or other instrument of conveyance thereof, by purchase at a foreclosure sale or by transfer in lieu of foreclosure, and will conclusively be deemed to have accepted such right, title or interest subject to all of the terms, covenants and conditions of this Lease; it being the specific intent of Lessee and the Leasehold Mortgagee that the Leasehold Mortgage encumber only Lessee's leasehold interest created by this Lease in the Property, and that except as specifically set forth in this Lease, the rights of Lessor shall not be affected by the terms of the Leasehold Mortgage; and
- (h) That the Leasehold Mortgage and all rights thereunder shall be subject and subordinate to Lessor's interest in the Property. The Leasehold Mortgagee shall upon demand, at any time, execute, acknowledge and deliver to Lessor, without expense to Lessor, any instrument that may be necessary or proper to confirm the subordination of the Leasehold Mortgage to the Lessor's interests in the Property.

ARTICLE IX - LESSOR'S RIGHTS AND REMEDIES

9.1 LANDLORD-TENANT RELATIONSHIP.

All of the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the laws of the State of Florida as they exist from time to time, as such law relates to the respective rights and duties of landlord and tenant.

9.2 ALL RIGHTS AND REMEDIES.

During the continuance of this Lease, the Lessor shall have all rights and remedies

which this Lease and the law of the State of Florida assures to it.

9.3 RIGHTS AND REMEDIES CUMULATIVE.

All rights and remedies accruing to the Lessor shall be cumulative; that is to say, the Lessor may pursue such rights as the law and this Lease afford to it in whatever order the Lessor desire and the law permits, without being compelled to resort to any one remedy in advance of any other.

ARTICLE X - INDEMNIFICATION OF LESSOR AGAINST LIABILITY

10.1 INDEMNIFICATION CLAUSE.

Lessee covenants and agrees with Lessor that during the entire term of the Lease the Lessee will indemnify and save harmless the Lessor against any and all claims, debts, demands or obligations that may be made against or upon the Lessor, arising by reason of or in connection with this Lease, or any alleged act or omission of the Lessee or any person claiming by, through or under the Lessee; and if it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by the Lessor in effecting such defense, including appeals, as and when such fees and expenses become due and payable, in addition to any other sums which the Lessor may be called upon to pay by reason of the entry of a judgment against the Lessor or any of them in the litigation in which such claim is asserted.

10.2 COMMERCIAL GENERAL LIABILITY CLAUSE.

From the time of the commencement of this Lease, the Lessee will cause to be written and pay all premiums on a policy or policies of insurance in the form generally known as Commercial General Liability policies, insuring the Lessee, and naming the Lessor as an additional insured, against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the operation and maintenance of the Demised Premises, including

improvements and buildings located thereon, or for any other reason whatsoever, or for any other risk insured against by such policies, each class of which policies shall have been written with limits of not less than One Million (\$1,000,000.00) Dollars for damages incurred or claimed by any one (1) person, and for not less than Three Million (\$3,000,000.00) Dollars for damages incurred or claimed by more than one person. All such policies shall name the Lessee and the Lessor as their respective interests may appear, as the persons insured by such policies. The original or a true copy of each of such policies shall be delivered by the Lessee to the Lessor promptly upon the writing of such policies, together with adequate evidence of the fact that the premiums are paid, and such insurance shall be kept continuously in full force and effect by the Lessee at Lessee's sole cost and expense. The insurance shall be placed with an insurance company having a Best Company rating of "A" or better, if such insurance is available from such company(ies). If such insurance is not available on the private market, Lessee may obtain insurance through alternate providers, after approval in writing from Lessor. Lessor may review insurance coverages and require increased coverage consistent with the value of improvements to the Property as improvements to the Property are made.

10.3 INDEMNIFICATION CLAUSE FOR LEASE CHALLENGES.

Lessee shall also protect, defend, indemnify and hold Lessor harmless against any loss or damage, including attorneys fees and costs, arising out of or resulting from any claim, action or law suit brought by a third party to (i) challenge the validity or enforceability of this Lease, or any City action relating to this Lease, including the procedures established for the approval thereof; (ii) challenge the Lessor's title to the Demised Premises; or (iii) enjoin this Lease. If any litigation is instituted against the Lessor and/or the Lessee as a result of the approval of this Lease, then the Lessee shall defend the Lessor and save the Lessor harmless from any and all reasonable attorneys' fees and court costs that may be incurred, both at the trial and appellate level. Counsel in such actions shall be selected by Lessee, subject to approval of Lessor, which approval shall not be unreasonably withheld or delayed.

10.4 COMPLIANCE WITH ALL LAWS, ETC.

Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the Premises and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Lessor or Lessee with respect to the use or occupation of the Premises.

10.4.1 RULES ON HAZARDOUS MATERIALS.

Lessee shall (i) not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees without the prior written notice to Lessor, demonstrating to Lessor that such Hazardous Material is necessary or useful to Lessee's use of the Premises and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of

space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises results in any contamination of the Premises, Lessee shall promptly take all reasonable actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

10.4.2 HAZARDOUS MATERIALS DEFINED.

"Hazardous materials" mean (a) pesticides and insecticides; (b) petroleum and its constituents; (c) any substance which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes" or words of similar import under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9061, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., Chapters 376 and 403, Florida Statutes; Chapter 24 of the Code of Metropolitan Dade County; (d) any other

substance, the exposure to or release of which is regulated by any governmental entity having jurisdiction over the Premises or the operations thereon; and (e) any substance that does or may pose a hazard to the health or safety of the persons employed at or invitees on the Premises.

10.4.3 FURTHER DISCLOSURE OF HAZARDOUS MATERIALS.

At the commencement of this Lease, and on January 1 of each year thereafter (each such date being hereafter called "Disclosure Date"), including January 1 of the year after the termination of this Lease, Lessee shall disclose to Lessor the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, used or disposed of on the Premises, or which Lessee intends to store, use or dispose of on the Premises. Notice of Lessee's use of Hazardous Materials on the Property shall not be a waiver of any of Lessor's claims, defenses or rights related to Lessee's use of such materials.

10.4.4 LESSOR'S RIGHT TO INSPECT.

Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any reasonable time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, Lessor shall have the right to immediately enter upon the Premises to remedy any contamination caused by Lessee's failure to comply notwithstanding any other provision of this Lease. Lessor shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby.

10.4.5 DEFAULT.

Any default under this Paragraph shall be a material default enabling

Lessor to exercise any of the remedies set forth in this Lease.

10.4.6 LESSEE RECEIVES PROPERTY "AS IS".

Lessee acknowledges it has occupied Parcel "A" of the Property pursuant to the prior Agreements, since 1988, and has occupied Parcel "B", pursuant to its installation and maintenance of a temporary boat storage structure, since 1988, and is receiving the Property in "as is" condition, and Lessor is not responsible for the existing condition of the Property.

ARTICLE XI - FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS

11.1 PROPERTY ALL RISK COVERAGE POLICIES.

Lessee covenants and agrees with Lessor that Lessee will insure and keep insured any and all buildings and improvements now upon and hereafter placed upon the Demised Premises and any and all personal property which Lessee brings, or has brought, or which under the terms of this Lease, the Lessee may be obligated to bring upon the Demised Premises, all of which insurance shall be written through insurance companies authorized to do business in the State of Florida, for Property All Risk Coverage, including protection against all loss or damage by fire, windstorm and flood, and what is generally termed in the insurance field as "extended coverage," which insurance will be maintained in an amount that will be sufficient to prevent any party in interest from being or becoming a co-insurer of any part of the risk, and all of such policies of insurance shall bear a "Loss payable clause" in which there shall be included the names of the Lessor as parties insured thereby, as their interests may appear.

11.2 BUILDERS' RISK INSURANCE POLICIES.

From the inception of any construction which Lessee may effect on the Demised Premises, the Lessee will cause Builders' Risk insurance policies to be written and

maintained throughout such construction in compliance with the provisions of the foregoing paragraph.

11.3 USE OF INSURANCE PROCEEDS.

In the event of the destruction of or damage to the buildings, or of any of the improvements, by fire, windstorm or other casualty for which insurance shall be payable, and as often as such insurance money shall have been paid to the Lessor and the Lessee, sums so paid shall be deposited in a joint account of the Lessor and Lessee in a bank in Miami-Dade County, Florida designated by the Lessor, and shall be available to the Lessee for the reconstruction or repair, as the case may be, of any building or buildings, damaged or destroyed by fire, windstorm or other casualty for which insurance money shall be payable, and shall be paid out by the Lessor and the Lessee from the joint account from time to time on the estimate of any architect licensed in the State of Florida having supervision of such reconstruction and/or repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction and/or repair and at a reasonable cost therefor; provided, however, that it first be made to appear to the satisfaction of the Lessor that the amount of money necessary to provide for the complete reconstruction and/or repair of any, building or buildings destroyed or damaged as aforesaid, according to the plans adopted therefor and approved by the Lessor, has been provided by the Lessee for such purpose and its application for such purpose assured. The proceeds of the Personal Property Insurance covering personal property belonging to the Lessee shall likewise be deposited in a joint bank account to the credit of the Lessor and the Lessee, and shall be paid out for the replacement or repair, as the case may require, of destroyed or damaged personal property. The Lessee covenants and agrees that in the event of the destruction of or damage to the buildings and/or improvements or any part thereof, and as often as any buildings or improvements on the Premises shall be destroyed or damaged by fire, windstorm, or other casualty, the Lessee shall rebuild or repair (as the case may require), the same in such manner that the building or improvement so rebuilt and/or

repaired shall be of the same or greater value as the building and the improvements upon the Demised Premises were immediately prior to such damage or destruction, and shall have the same rebuilt and/or repaired and ready for occupancy and have received the appropriate certificate of occupancy and/or completion from the City's Building Department within two years from the time when the damage or destruction occurred, and shall within that period replace and repair as the case may require, personal property destroyed or damaged; this obligation of the Lessee to rebuild and repair the buildings and improvements, and to replace and repair the personal property, shall exist and be enforceable irrespective of the availability of any insurance funds for any of these purposes. With Lessor's prior written consent, the two-year period for reconstruction or repair shall be enlarged and extended by delays caused without fault or neglect on the part of the Lessee, by act of God, strikes, lockouts or other conditions beyond the Lessee's control.

11.4 FINANCING OF PREMIUMS.

Nothing herein contained shall be construed as prohibiting the Lessee from financing the premiums on such policies, or from such payments having a deductible amount not exceeding five percent (5%) of the insurable value of the improvements.

11.5 DEFAULT OF CASUALTY.

If at any time any such insurance money comes into the possession of the Lessor and the Lessee after destruction or damage by fire or windstorm or other casualty and the Lessee is in default in the payment of rent, taxes, assessments, liens or other charges which by the terms of this Lease the Lessee is obligated to pay or pay for, or if such default should occur during the time such insurance money or any part thereof is in the joint bank account, as aforesaid, then the Lessor shall be paid so much of the insurance money as may be necessary fully to pay or discharge any such sum of money in the payment of which the Lessee is in default, as aforesaid, and this shall be done whenever and as often as any such default shall occur on the

part of the Lessee. Nothing contained herein, however, shall be construed as permitting the Lessee to default in the payment of rent or other charges herein stipulated to be paid or in the performance of the other covenants in this Lease. The Lessor may, at its option, in case of default in the payment of such rent or other charges or default in the performance of any other covenant in this Lease, proceed against the Lessee for the collection of such rental and charges, and recover and take possession of the Premises herein described, and without prejudice to their rights to the benefit of such insurance money as payment of such rental and other charges.

11.6 EXCESS INSURANCE PROCEEDS.

It is agreed by and between the Lessor and Lessee that any excess of money received from insurance or other sources remaining in the joint bank account after the completion of the reconstruction, replacement or repair of such building or buildings and personal property, and if there is no default on the part of the Lessee in the performance of any of the covenants of this Lease, shall be paid to Lessee; but in the event the Lessee fails for any reason to commence the reconstruction or repair of such building or buildings within six (6) months after the date of the damage or destruction occasioned by fire, windstorm or other cause for which insurance money shall be payable, or the Lessee for any reason fails within that six (6) month period to provide in the manner required by Paragraph 11.3 of this Article XI, a sufficient sum of money to prosecute the reconstruction and repair work with such dispatch as may be necessary to complete the same within eighteen (18) months after the occurrence of such damage or destruction occasioned as aforesaid, except in the case of Force Majeure, as provided in Article XXVI, or Unavoidable Delays under paragraph 15.11.1, then and in every such event, the Lessee shall be deemed to have refused to carry out its obligation to reconstruct, replace and repair, and the amount so collected or the balance thereof remaining in the joint account, as the case may be, shall be paid to the Lessor as liquidated and agreed upon damages resulting from the failure of the Lessee to reconstruct,

replace and repair, and the Lessor shall have the option, notwithstanding its retention of such sum, to terminate this Lease.

ARTICLE XII - LESSEE'S DUTY TO PAY INSURANCE PREMIUMS

12.1 OBLIGATION AND PROOF OF PAYMENT.

Lessee covenants and agrees with Lessor that Lessee will pay the premiums for all of the insurance policies which Lessee is obligated to carry under the terms of this Lease, and will deliver to the Lessor evidence that all such premiums have been paid on or before the effective date of each such policy or proper evidence of extended credit and/or evidence of financing the payment of such premiums, and Lessee will cause renewals of all expiring policies to be written, and the policies or copies thereof, as the Lease may require, to be delivered to the Lessor at least ten (10) days before the expiration date of such expiring policies. The parties note that in 10.2, Lessor may review insurance coverages and require increased coverage consistent with the value of improvements to the Property as improvements to the Property are made.

12.2 LESSOR'S OPTION TO PAY.

Nothing herein contained shall ever be construed as rendering the Lessor personally liable for the payment of any such insurance premiums, but if at any time during the continuance of this Lease the Lessee shall fail, refuse or neglect to procure any of the policies of insurance required in and by this instrument to be procured by the Lessee, or to keep and maintain the same in full force and effect, or to pay the premium therefore promptly when due, the Lessor may, at its option, procure or renew such insurance, and thereupon the amount or amounts of money paid as the premium or premiums thereon plus interest at the rate of ten per cent (10%) per annum from date of payment thereof shall be collectible as though it were rent then matured hereunder, and shall be due and payable forthwith, or in lieu thereof and notwithstanding the procurement and renewal of such policies by the

Lessor, this Indenture and the terms created hereby may, at the option of the Lessor, be terminated and declared at an end and all of the right, estate and interest of the Lessee in such event hereunder shall immediately cease and become null and void.

ARTICLE XIII - ASSIGNMENT

13.1 RIGHT AND CONDITIONS OF ASSIGNMENTS.

This Lease is not freely assignable, and no assignment, transfer, sublease, subconcession or license agreement shall be valid unless there is a prior written consent by the Lessor, which consent shall be within the sole discretion of the Lessor, and such instrument of assignment (the "Assignment") that has been consented to is in writing, which Assignment must contain an assumption agreement, duly executed by the Assignee of this Lease and in recordable form, wherein and whereby the Assignee accepts the assignment and assumes and agrees to timely and fully perform and comply with all of the Lessee's covenants and agreements contained in this Lease, and unless and until written notice (the "Notice") shall have been given to the Lessor by the Assignor and Assignee, (the Notice to be given in the manner hereinafter prescribed as the manner and method for giving Notice), enclosing a duplicate-original or photocopy of the original instrument of Assignment and the address at which Notice may thenceforth be given to the Assignee. Approval of any assignment or transfer to an entity other than a not-for-profit corporation shall be conditioned upon the renegotiation of the rent to be paid under this Lease to reflect a fair market value of the demised premises. Subleases, subconcessions, or license agreements consistent with the uses set forth in paragraph 4.1 are subject to the approval of Lessor, which approval shall not be unreasonably withheld.

13.2 NOTICE AND APPROVAL.

The Lessor covenants and agrees that it will within sixty (60) days after service of

Notice upon it of a proposed assignment of this Lease, giving the name and post office address of the proposed Assignee, advise the Lessee in writing as to whether the Lessor will consent to the assignment of the Lease and further advise the Lessee in writing of the existence or nonexistence of any default on the part of the Lessee under the terms of this Lease, and if there is any default or defaults, a statement setting forth such default or defaults. Lessor's failure to give such advice in writing within the time required shall not constitute either notice of the absence of any default, or consent to the proposed assignment. Only Lessor's response in writing of the existence or not of a default and permission or not of an assignment shall be effective with respect to each such item.

13.3 TRANSFERS OR ASSIGNMENT BY LEASEHOLD MORTGAGEE.

Any transfer or assignment of this Lease, as a result of the Leasehold Mortgagee having acquired title to the leasehold estate of Lessee by foreclosure of the Leasehold Mortgage, or transfer in lieu of foreclosure, shall require prior written consent of the Lessor.

ARTICLE XIV - CONDEMNATION CLAUSE

14.1 DIVISION OF CONDEMNATION PROCEEDS.

It is further understood and agreed that if at any time during the continuance of this Lease the Demised Premises or the improvements and buildings located thereon or any portion thereof be taken, appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings, and such abatement of rent and other adjustments made, as shall be just and equitable under the circumstances. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of rent or other adjustments are just and equitable within thirty (30) days after such award shall have been made, then the matters in dispute shall by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy in

Miami-Dade County, Florida, for its decision and the determination of the matters in dispute. If the legal title to the entire Demised Premises is wholly taken by condemnation, the Lease shall automatically and without notice be canceled. No allocation of condemnation proceeds between Lessor and Lessee shall be based upon Lessee's interest in the land; notwithstanding, the Lessee shall be compensated for Lessee's interest in the improvements under this Lease in accordance with the condemnation award.

14.2 LESSEE'S IMPROVEMENTS.

Although the title to the buildings and improvements placed by the Lessee upon the Demised Premises will pass to the Lessor upon the termination of this Lease, nevertheless, for purposes of condemnation only, the fact that the Lessee placed such buildings and improvements on the Demised Premises, at Lessee's cost and expense, shall be taken into account in determining the portion of the condemnation award to which the Lessee is entitled. In general, it is the intent of this Article that upon condemnation, the parties shall share in their awards to the extent that their interests respectively are depreciated, damaged or destroyed by the exercise of the right of eminent domain.

14.3 TAKING RENDERING PREMISES UNSUITABLE FOR PERMITTED USES.

If a partial taking or a total taking renders the Premises unsuited for the permitted uses as provided for herein, Lessee, may at its sole option and expense, remove all of its personal property from the portion of the property taken, however, Lessee shall continue to be liable under this Lease and continue its rights and obligations as to the remainder of the Property not so taken, unless released in writing by Lessor.

ARTICLE XV - ADDITIONAL IMPROVEMENTS

15.1 PROPOSED IMPROVEMENTS.

This Lease is made with the understanding and agreement that Lessee will

construct additional improvements (the "Proposed Improvements"), to the buildings and improvements presently located on the Demised Premises, on Parcel "A" and Parcel "B", respectively, valued collectively at no less than One Million (\$1,000,000) Dollars, such amount to include a minimum of Seven Hundred Thousand (\$700,000) Dollars, to be provided by Lessee, and Three Hundred Thousand (\$300,000) Dollars, which is the amount appropriated by Lessor, via Resolution No. 2000-24016, dated July 26, 2000, to be used toward the proposed improvements. The Proposed Improvements shall be placed on Parcel "A" and Parcel "B", respectively, comprising the Property, and shall not be inconsistent with the plans presented by Lessee to Lessor, and as approved by Lessor in the manner provided below. Any and all improvements, shall be at the sole cost and expense of the Lessee.

15.2 LESSEE'S RESPONSIBILITY FOR DESIGN AND APPROVALS.

Lessee is solely responsible for the design of any improvements to the Property, and obtaining all approvals from City and other applicable regulatory agencies therefor, including approvals by City, as Lessor, and approvals by City in its regulatory capacity under the City Code and other applicable laws. Pursuant to Miami Beach City Code 142-423, Lessee has submitted its proposed uses and the plans to the Planning Board for its review. The Planning Board recommended approval of the uses and supports Lessee's plans, subject to the conditions approved by the Planning Board, at its regular meeting on May 25, 2002 (Planning Board File No. 1568).

15.3 PRELIMINARY PLANS AND SPECIFICATIONS.

Lessee has submitted to Lessor preliminary plans and specifications for the Proposed Improvements, which shall include, but not be limited to, a detailed site plan, a landscape plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Proposed Improvements, a calculation of the floor areas for each floor, and a calculation of the total floor area dedicated to each use within the

Proposed Improvements (the "Preliminary Plans and Specifications"). Lessor's "Preliminary Plans and Specifications" were considered by the City's Design Review Board (DRB) at its regular meeting on July 11, 2001 (DRB File No. 14437), and received Final Order and approval. Said Final Order is attached as **Exhibit "D"**, hereto. (On June 18, 2002, the Design Review Board granted Lessee an extension within which to pull its building permit.)

15.4 PUBLIC FACILITIES AND CONCURRENCY.

Lessee shall be solely responsible for obtaining and maintaining current all land use permits (including the aforesaid respective approvals granted by the City's Planning Board and Design Review Board), including, but not limited to, all permits and approvals required pursuant to Chapter 122, Miami Beach City Code, with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "Concurrency Requirements").

15.5 PLANS AND SPECIFICATIONS.

Following the DRB's approval of the Proposed Improvements, which approval was given on July 11, 2001 (and as extended on June 18, 2002), and all other City boards' approvals, as applicable, Lessee shall prepare for review by Lessor construction Plans and Specifications for construction of the Proposed Improvements, consistent with the Preliminary Plans and Specifications, as approved by the Planning Board and the DRB, and incorporating the conditions established by these respective boards. The Plans and Specifications shall be submitted to the Lessor (acting in its proprietary capacity as owner of the Property) within ninety (90) days from the date on which the DRB approved the Proposed Improvements. The Plans and Specifications, or modifications thereto, shall be reviewed by the City Manager or, at his discretion, the City's Building Director, as the Manager's designee, within twenty (20) business days, except for modifications thereto, which shall be reviewed within ten (10) business days, solely for consistency with the Preliminary Plans and Specifications as the same may have

been modified by the Planning Board, DRB or other City boards, as applicable. If Lessor disapproves the Plans and Specifications, then Lessee shall submit a revised modification to the Plans and Specifications to meet Lessor's objections, which revised modification shall be submitted and reviewed as provided above. Lessee shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

15.6 CONDITIONS PRECEDENT TO LESSEE'S COMMENCEMENT OF CONSTRUCTION OF THE PROPOSED IMPROVEMENTS.

Lessee shall not commence construction of the Proposed Improvements, or any portion thereof, unless and until Lessor shall have approved the Plans and Specifications, as provided in this Lease. Lessee shall obtain a final building permit for the Proposed Improvements as follows:

- (a) For improvements to Parcel "B" (dry dock facility) -- on or before August 30, 2002, but in any event, no later than November 29, 2002.
- (b) For improvements to Parcel "A" (second story) -- on or before May 31, 2003, but in any event, no later than November 28, 2003.

Failure to do so shall constitute a Default under this Lease. Lessor's remedy for this Default, and for all defaults under this Article 15 for failure to follow the time schedule under this Article related to the Proposed Improvements, shall be limited to a reversion of the duration of the lease term and/or a description of the Demised Premises, to those provided in the Amended and Restated Lease Agreement, dated November 21, 1991. In such event, all other remaining provisions of this Lease shall remain in full force and effect. Lessee shall not commence construction of the Proposed Improvements unless and until (a) Lessee shall have obtained and delivered to Lessor copies of all final Permits and Approvals required to commence construction and (b) Lessee shall have delivered to Lessor original certificates of the policies of insurance required to be carried pursuant to this Lease.

15.7 LESSOR'S COOPERATION IN OBTAINING APPROVALS.

Lessor (solely in its capacity as the owner of the Property and not in its regulatory capacity) shall reasonably cooperate with Lessee in obtaining the Permits and Approvals required to construct the Proposed Improvements, shall sign any application reasonably made by Lessee that is required in order to obtain such permits and approvals and shall provide Lessee with any information and/or documentation not otherwise reasonably available to Lessee (if available to Lessor) that is necessary to procure such permits and approvals. Any such accommodation by Lessor shall be without prejudice to, and shall not constitute a waiver of, Lessor's rights to exercise its discretion in connection with its regulatory functions. Lessee shall reimburse Lessor, within ten (10) days after Lessor's demand, for any reasonable out-of-pocket cost or expense payable to Lessor's technical consultants (other than Lessor's employees), such as architects and engineers, so incurred by Lessor in connection with Lessor's assistance in obtaining the permits and approvals required by the Proposed Improvements.

15.8 COMMENCEMENT OF CONSTRUCTION OF PROPOSED IMPROVEMENTS.

Lessee shall at its sole cost and expense:

- (1) Commence construction of the Proposed Improvement as follows:
 - (a) Parcel "B" – September 30, 2002, but in any event no later than December 31, 2002.
 - (b) Parcel "A" – August 31, 2003, but in any event no later than February 27, 2004.(collectively, the "Construction Commencement Dates"); and
- (2) Thereafter continue to prosecute construction of the Proposed Improvements with diligence and continuity to completion. "Commence Construction" or "Commencement of Construction" means the commencement of major work (such as pilings or foundations) for construction of the Proposed Improvements. Promptly after Commencement of Construction, Lessee shall notify Lessor in writing of the date of such commencement. Any and all

preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be Commencement of Construction. If, after Lessee has commenced construction, Lessee fails to diligently prosecute construction of the Proposed Improvements (subject to unavoidable delays), and such failure continues (subject to unavoidable delays) for thirty (30) consecutive days after Lessee's receipt of notice of such failure, Lessor shall, in addition to all of its other remedies under this Lease, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of construction of the Proposed Improvements (subject to unavoidable delays) by Lessee, it being understood that construction of the Proposed Improvements is a material inducement to Lessor to enter into the Lease and monetary damages shall be inadequate to compensate Lessor for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Lessee fails to substantially complete construction of the Proposed Improvements by the date provided for in this Lease, then the same shall constitute a default under this Lease.

15.8.1 UNAVOIDABLE DELAYS.

"Unavoidable delays" shall mean delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, eminent domain, catastrophic weather conditions, a court order that actually causes a delay (unless resulting from disputes between or among the party alleging an unavoidable delay, present or former employees, officers, members, partners or shareholders of such alleging party or of affiliates of such alleging party), in the application of any requirement. The party alleging unavoidable delay shall notify the other within twenty days of such occurrence, however, failure to do so shall not

waive any rights caused by such delay. The times for performance related to the Proposed Improvements set forth in this Lease shall be extended to the extent performance is delayed by unavoidable delays.

15.9 COMPLETION OF CONSTRUCTION OF PROPOSED IMPROVEMENTS.

Substantial Completion of the Proposed Improvements shall be accomplished in a diligent manner, and in any event no later than:

- (a) For Parcel "B" – June 30, 2003, but in any event, no later than September 30, 2003.
- (b) For Parcel "A" – December 31, 2004, but in any event, no later than June 30, 2005.

"Substantial Completion" as used herein shall require the issuance of a temporary or final certificate of occupancy by the City's Building Department. Such date may be extended for good cause shown upon request in writing to Lessor's City Manager, which extension by the City Manager shall not be unreasonably withheld. Final completion of the construction of the Proposed Improvements, shall be accomplished in a diligent manner, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), at Lessee's sole cost and expense. Upon Substantial Completion of construction of the Proposed Improvements, Lessee shall furnish Lessor with the following:

- (a) A certification of the Architect (certified to Lessor on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Proposed Improvements have been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements comply with all applicable codes and laws;
- (b) A copy or copies of the temporary and final certificates of occupancy for the Proposed Improvements (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

- (c) Lien waivers in form and substance reasonably satisfactory to Lessor from each contractor, subcontractor, supplier or materialman retained by or on behalf of Lessee in connection with the construction of the Proposed Improvements, evidencing that such persons have been paid in full for all work performed or materials supplied in connection with the construction of the Proposed Improvements;
- (d) A complete set of "as built" plans and a survey showing the Improvement(s) (excluding personalty) for which the construction of the Proposed Improvements has been completed. Lessor shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Property without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Property, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Lessee furnishing to Lessor, at Lessee's expense, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the construction of the Proposed Improvements; and
- (e) A Contractor's Final Affidavit in form and substance reasonably satisfactory to Lessor executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Lessee in connection with the Construction of the Proposed Improvements have been paid in full for all work performed or materials supplied in connection with the Construction of the Proposed Improvements and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

15.10 LICENSED ARCHITECTS AND ENGINEERS.

Construction of the Proposed Improvements shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer as required by applicable requirements.

15.11 CONSTRUCTION COST CLARIFICATION.

Upon Substantial Completion of the project, Lessee shall certify to Lessor that it has, in fact, expended not less than said amounts for total construction costs.

15.12 COMPLETION BOND.

Lessee shall deliver to the Lessor a Completion Bond with corporate surety authorized to do business as such in Miami-Dade County, Florida, and satisfactory to the Lessor as to the form and surety, guaranteeing the completion of the Proposed Improvements in accordance with the approved Plans and Specifications, and have received the appropriate certificate of occupancy and/or completion from the City's Building Department, and indemnifying and saving harmless the Lessor and the title of the Lessor against the claims of all parties who furnish work, labor, services and/or materials to the premises.

15.13 DILIGENCE IN CONSTRUCTION.

Any building operation, once commenced, must be carried through continuously to completion, but any interruption or delay in the doing and completion of the work which shall have been caused by act of God, or the public enemy, or strike, or natural casualty, or other circumstances not occasioned by or attributable to the fault, default or neglect of the Lessee shall not be deemed to cause the Lessee to be in default under this paragraph, so long as the Lessee exercises due diligence to cause the work of construction to be carried through to completion as promptly and expeditiously after the commencement thereof as possible.

ARTICLE XVI - DEED RESTRICTIONS CONCERNING THE USE OF THE PROPERTY

16.1 RESTRICTIONS.

The Demised Premises shall hereby contain the following restrictions, covenants and limitations:

- (a) That the Lessee shall at all times operate, maintain and utilize the Demised Premises as a rowing facility, and all related uses thereto;
- (b) That the Lessee shall at all times remain a not-for-profit corporation;
- (c) The Lessee shall affirmatively make the Property and the Lessee's programs and activities open to the persons of all races, colors, creeds or national origins.
- (d) That the Property shall at no time during the term of the Lease be assigned, sublet, or in any way shall the dominion and control over the Property be in any person or entity other than the Lessee, without the prior written consent of the Lessor, and if such consent is given, Fair Market Value shall be paid by Lessee or its successor to Lessor for such space assigned or sublet, unless this provision is waived by action of the City Commission;
- (e) That all fire and extended coverage and flood insurance, maintenance, and other costs for the improvements and the general upkeep of the Property, and all replacements necessary in connection therewith, shall be the sole cost and expense of the Lessee;
- (f) That the Lessee shall provide personnel on the Premises during operating hours during the entire term of the Lease.
- (g) That the Lessee shall be obligated to provide public liability insurance and property damage insurance at its cost and expense to the Demised Premises during the terms of this Lease.
- (h) Exterior signs, if any, will be of a design and form approved by the Lessor, and in accordance with the Miami Beach City Code and other applicable laws and codes. Lessee shall assume the cost of any such

signs. Lessee shall remove all signs upon the termination of this Lease and any damage or unsightly condition caused to the Property because of or due to such signs shall be corrected or repaired by Lessee to the satisfaction of Lessor.

16.2 VIOLATION OF RESTRICTION IS EVENT OF DEFAULT.

The violation by the Lessee of any of the covenants, restrictions and undertakings as set forth in Paragraph 16.1 above, shall be considered an Event of Default and the Lessor shall be entitled to all of the remedies as set forth in Article XVII hereof.

ARTICLE XVII - DEFAULT CLAUSE

17.1 EVENT OF DEFAULT.

It is further covenanted and agreed by and between the parties hereto that in case at any time default shall be made by the Lessee with regard to any of its obligations as provided in this Lease, except as specifically elsewhere provided, each of which shall be an "Event of Default," then, in any of such events, following notice in writing by certified mail, return receipt requested, or by hand delivery, or such other conveyance then permitted by law, and an opportunity to cure within the thirty-day period following delivery of such notice, and Lessee after such notice and opportunity to cure has failed to cure, as provided for in Paragraph 17.3, it shall and may be the Lessor's right to declare such demised term ended and to re-enter upon the Premises and the building or buildings and improvements situate thereon or any part thereof, either with or without process of law, the Lessee hereby waiving any demand for possession of the Premises and any and all buildings and improvements then situate thereon; and the Lessee covenants and agrees that upon the termination of the demised term, the Lessee will surrender and deliver up the Premises peaceably to the Lessor, its agents and attorneys, immediately upon the termination of the demised term; and if the Lessee, its agents, attorneys or other persons or entities claiming by or through Lessee, shall hold the Premises or any

part thereof one (1) day after the same should be surrendered according to the terms of this Lease, they shall be deemed guilty of forcible detainer of the Premises under the Statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

17.2 STATUTORY LANDLORD – TENANT PROCEEDINGS APPLY.

The parties understand and agree that the relationship between them is that of landlord and tenant, and the Lessee specifically acknowledges that the statutory proceedings in the State of Florida relating to the recovery of possession of the Premises accrues to the landlord hereunder.

17.3 THIRTY DAY CURE PERIOD.

Nothing herein contained shall be construed as authorizing the Lessor to declare this Lease in default until thirty (30) days after the Lessor shall have given the Lessee written notice of a violation of this Lease, and Lessee has failed to cure such violation within such time period. If the default complained of is of such a nature that it cannot be cured within thirty (30) days, and if the Lessee has commenced taking all reasonable steps to cure such default and is in the process of eliminating the facts which are the basis for the declaration of a default, then the Lessee shall not be deemed to be in default and the Lessor shall not be entitled to cancel or otherwise enforce the termination of this Lease. Nothing herein contained shall be construed as precluding the Lessor from having such remedy as may be and become necessary in order to preserve the rights and the interests of the Lessor in the Premises and in this Lease even before the expiration of the grace or notice periods provided for in this paragraph if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the Lessor in this Lease and in the Demised Premises, or the public health, safety and welfare.

17.4 LESSOR'S OTHER REMEDIES.

In addition to the rights set forth elsewhere in this Lease, Lessor shall have the right to pursue any or all of the following: (a) the right to injunction or other similar relief available to it under Florida law against Lessee; and/or (b) the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Lessee's default.

17.5 LIQUIDATED DAMAGES.

It is further covenanted and agreed by and between the parties hereto, in the event of the termination of this Lease at any time before the expiration of the term hereby created, for the breach by the Lessee of any of the covenants herein contained, that in such case all of the right, estate and interest of the Lessee in and under this indenture and in the Demised Premises hereinabove described, and all improvements and buildings then situate on the Demised Premises, together with all rents, issues and profits of the Premises and the improvements thereon, whether then accrued or to accrue, and all insurance policies and all insurance monies paid or payable thereunder, and all of them, shall without any compensation made therefore unto the Lessee, at once pass to and become the property of the Lessor, not as a penalty or forfeiture, but as liquidated damages to the Lessor because of such default by the Lessee and the consequent cancellation of the Lease, each of the parties acknowledging it to be the fact that for breach and consequent cancellation of a long-term lease of this character, the Lessor will sustain substantial damage, being damage of such character as to make it most burdensome and tedious, if not actually impossible, to ascertain with mathematical precision, and each of the parties therefore having agreed upon this provision for liquidated damages in the interests of obviating what would otherwise be burdensome and difficult litigation to maintain or to defend, as the case may be; and this provision for liquidated damages has been taken into account by both parties in fixing the term of and the consideration for the making of this Lease.

17.6 RECEIVER.

The Lessee pledges with and assigns unto the Lessor all of the rents, issues and profits which might otherwise accrue to the Lessee for the use, enjoyment and operation of the Demised Premises, and in connection with such pledging of the rents, the Lessee covenants and agrees with the Lessor that if the Lessor, upon the default of the Lessee, elects to file a suit to enforce the Lease and protect the Lessor's rights thereunder, then the Lessor may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a Receiver of all and singular the Demised Premises, and the improvements and buildings located thereon; and thereupon, it is expressly covenanted and agreed that the court shall forthwith appoint a Receiver with the usual powers and duties of Receivers in like cases, and such appointment shall be made by such court as a matter of strict right to the Lessor, and without reference to the adequacy or inadequacy of the value of the property which is subject to the landlord's lien or to the solvency or insolvency of the Lessee, and without reference to the commissions of waste.

ARTICLE XVIII - LESSEE'S DUTY TO KEEP PREMISES IN GOOD REPAIR

18.1 LESSEE'S COVENANT REGARDING MAINTENANCE AND REPAIR.

Lessee covenants and agrees with the Lessor that during the Lease term the Lessee will keep in good state of maintenance and repair any and all buildings and other improvements constructed upon the Demised Premises; nor will the Lessee suffer or permit any strip, waste or neglect of any building to be committed; and the Lessee will repair, replace and renovate the real property, and improvements located thereon, as often as it may be necessary to keep the building and improvements on the Property in a good state of repair and condition.

18.2 LESSEE'S COVENANT REGARDING UTILITIES.

Lessee covenants and agrees with the Lessor that Lessee shall be obligated for all utilities utilized on the Demised Premises for the entire term of this Lease.

ARTICLE XIX - DEMOLITION CLAUSE

19.1 LESSEE'S RIGHT TO DEMOLISH CONDITIONED.

Although it is the Lessee's duty under the terms hereof to keep and maintain any buildings and improvements on the Demised Premises in good repair, this shall not be construed as empowering the Lessee to at any time tear down and destroy any buildings or improvements, on the Demised Premises, or any part thereof, unless and until the Lessee:

- (a) Follows all procedures necessary for development approval as provided for in this Lease, and causes construction plans and specifications for the new building or the new construction to be prepared in full accordance with all applicable laws, building codes, zoning ordinances, statutes and regulations, and delivers the plans to the Lessor at least ninety (90) days before the work proposed to be done pursuant thereto is actually commenced; and
- (b) Obtains the written approval of the construction plans and specifications by the Lessor, which shall in writing approve or disapprove such plans and specifications within twenty (20) days after their delivery to the Lessor, which approval shall not be unreasonably withheld (It shall not be unreasonable to disapprove plans not in compliance with the Preliminary or construction Plans and Specifications, last approved by Lessor); and
- (c) Furnishes the Lessor with what is generally known as a Completion Bond with corporation surety, guaranteeing the doing and completion of the work.

19.2 VALUE OF RECONSTRUCTION.

In any event, the work of reconstruction, repair and replacement must have a value of not less than the current market value of the buildings or improvements or the portion thereof then being demolished and replaced and repaired.

19.3 EXPENSE OF DEMOLITION AND RIGHT TO SALVAGE.

The expense of demolition shall be no part of the cost of any subsequent

replacement or rebuilding or addition; but by the same token, any salvage resulting from the demolition shall belong to the Lessee.

ARTICLE XX - ADDITIONAL COVENANTS OF THE LESSEE

20.1 DESTRUCTION OR CASUALTY NO ENTITLEMENT TO TERMINATION.

Lessee covenants and agrees with Lessor that no destruction to any building or improvement by fire, windstorm or any other casualty shall be deemed to entitle the Lessee to surrender possession of the Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof. If the Lease is canceled as the result of Lessee's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within Lease, be deemed immediately to become the absolute and unconditional property of the Lessor.

20.2 NO SUBORDINATION OF LESSOR'S TITLE.

Lessee covenants and agrees with Lessor that nothing in this Lease contained shall ever be construed as empowering the Lessee to encumber or cause the Lessor to encumber or subordinate the title or interest of the Lessor.

20.3 CONVENANT REGARDING SURRENDER.

Lessee covenants and agrees with Lessor that at the termination of this Lease the Lessee will peaceably and quietly deliver possession of the Premises and all improvements thereon unto the Lessor.

20.4 FURTHER CONVENANT REGARDING ENCUMBRANCES.

Lessee shall not mortgage, pledge, hypothecate or otherwise encumber its leasehold interest without the prior written consent of Lessor, as provided for in this

Lease.

ARTICLE XXI - COVENANT OF QUIET ENJOYMENT

Lessor covenants and agrees with Lessee that as long as the Lessee keeps and performs all of the covenants and conditions by the Lessee to be kept and performed, the Lessee shall have quiet and undisturbed and continuous possession of the premises, free from any claims against the Lessor and all persons claiming under, by or through the Lessor.

ARTICLE XXII - LESSOR'S RIGHT OF ENTRY

The Lessor or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, and to assure and safeguard that the public purposes contemplated in Paragraphs 4.2 and 4.3 are being carried out; provided, only, that such rights shall be exercised in such manner so as not to interfere with the Lessee in the conduct of the Lessee's business on the Premises; and if the Premises are damaged by fire, windstorm or by other casualty that causes the Premises to be exposed to the elements, then the Lessor may enter upon the Premises to make emergency repairs; but if the Lessor exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Lessee from his obligation to keep the Premises in repair. If Lessor makes any emergency repairs pursuant to the terms hereof, Lessee shall reimburse Lessor for all such repairs upon receipt by Lessee of Lessor's notice of repairs made and statement and proof of costs incurred.

ARTICLE XXIII - NO REPRESENTATIONS BY LESSOR

Lessee acknowledges that it has examined the Premises and knows the condition thereof and accepts the Premises in its present condition, "as is," and without any representations or warranties of any kind or nature whatsoever by Lessor as to its condition or as to the use or occupancy which may be made thereof. The Lessee assumes, in accordance with provisions of this Lease, the sole responsibility for the condition, operation, maintenance and management of the Premises and all improvements now or hereafter situated thereon, and the Lessor shall not be required to furnish any facilities or services or make any repairs

or structural changes, additions or alterations thereto.

ARTICLE XXIV - LESSEE TO COMPLY WITH ALL LAWS

24.1 LESSEE'S COMPLIANCE WITH ALL LAWS.

Lessee shall at all times comply with all laws, ordinances, regulations and orders of Federal, State, County and municipal authorities pertaining to the Premises and Lessee's improvements and operations thereon.

24.2 LESSEE'S OBLIGATION TO PAY FINES, ETC.

Lessee shall pay all costs, expenses, fines, penalties and/or damages which may be imposed because of the failure of Lessee to comply with this Article, and Lessee shall indemnify Lessor from any and all liability arising from such noncompliance.

24.3 NO DISCRIMINATION CLAUSE.

Lessee covenants and agrees that there will be no discrimination as to race, color, creed or national origin in its use of the Premises.

ARTICLE XXV - SURRENDER OF THE PREMISES

25.1 SURRENDER OF THE PREMISES.

The Lessee shall, on or before the last day of the term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the Lessor the Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property located at or on the Premises and used by Lessee in the maintenance, management or operation of the Premises, excluding any trade fixtures or personal property which can be removed without material injury to the Premises, free of all liens, claims and encumbrances and rights of others and broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Premises, in

good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Article. Any property which pursuant to the provisions of this Article is removable by Lessee on or at the Premises upon the termination of this Lease and is not so removed may, at the option of the Lessor, be deemed abandoned by the Lessee, and either may be retained by the Lessor as its property or may be removed and disposed of by Lessor at the sole cost of the Lessee in such manner as the Lessor may see fit. If the Premises and personal property are not surrendered at the end of the term as provided in this Article XXV, the Lessee shall make good to the Lessor all damages which the Lessor shall suffer by reason thereof, and shall indemnify, the Lessor against all claims made by any succeeding tenant, or purchaser, so far as such delay is occasioned by the failure of the Lessee to surrender the Premises as and when herein required.

25.2 NO SUBLEASES, ETC.

The Lessee covenants and agrees that it will not enter into any subleases, subtenancies, licenses or concession agreements relating to the Premises for a period of time beyond the stated expiration date of this Lease.

ARTICLE XXVI - FORCE MAJEURE

Either party hereto shall be excused from performing any of its respective obligations or undertakings provided in this Lease, except as provided in Article XXV hereof, "Surrender of the Premises," and excepting any of its respective obligations or undertakings to pay any sums of money under the applicable provisions hereof, for so long as the performance of such obligations are prevented or delayed, retarded or hindered (plus such additional time mutually consented to by the parties) by act of God, weather or unusual severity, fire, earthquake, flood, hurricane, explosion, action of the elements, war (declared or undeclared), invasion, insurrection, riot, mob violence, sabotage, malicious mischief, inability to produce or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions,

condemnation, public requisition, laws, order of government or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the occurrence of such event.

ARTICLE XXVII- MISCELLANEOUS PROVISIONS

27.1 GRACE PERIODS RUN CONCURRENTLY.

All periods of notice and/or grace, including any periods of notice which the law may require as conditions precedent to the exercise of any rights by the Lessor against the Lessee shall, at the option of the Lessor, run concurrently and not successively.

27.2 ARREARAGES.

All arrearages in the payment of rent shall bear interest at the rate of ten percent (10%) per annum from the date when they became due and payable hereunder until the date when they are actually paid.

27.3 LANDLORD-TENANT RELATIONSHIP REGARDING COLLECTIONS.

The relationship between the parties is that of landlord and tenant, and all statutory provisions in the State of Florida regulating the relationship of landlord and tenant, respecting the collection of rent and other charges, or the repossession of the Demised Premises, shall accrue to the Lessor hereunder.

27.4 LESSOR'S REMEDIES NOT OTHERWISE PROVIDED.

In the event of a breach or threatened breach by the Lessee of any of the agreements, conditions, covenants or terms hereof, the Lessor shall have the right of injunction to restrain the same, and the right to invoke any remedy allowed by law or in equity as if specific remedies, indemnity or reimbursement were not herein provided for.

27.5 RECEIVERS.

In the event of any default on the part of the Lessee in the performance of or compliance with any of the terms, covenants, provisions or conditions of this Lease, and the Lessor is required to bring any action or proceedings as a result thereof, then it is agreed that the Lessor shall have the right to apply to any court having jurisdiction for the appointment of a Receiver of all and singular the Demised Premises, buildings, fixtures, furnishings and improvements located thereon, together with the rents, issues and profits therefrom, and the Lessee does hereby expressly consent to the appointment of such Receiver by the court with the usual powers and duties of Receivers in such cases, and that such appointment be made by the court as a matter of strict right to the Lessor and without reference to the adequacy or inadequacy of the value of the property which is subject to the Lessor's liens, or to the solvency or insolvency of the Lessee, and without reference to the commissions of waste.

27.6 COOPERATION.

The Lessor and Lessee hereby agree to cooperate fully with each other at all times, and in addition to those matters hereinabove specifically referred to, to perform such other and further acts, and sign and deliver such papers and documents, as may be necessary in the circumstances from time to time during the term of this Lease to give full effect to all of the terms, covenants, conditions and provisions of this Lease.

27.7 CAPTIONS.

The captions of this Lease are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Lease nor in any way affect this Lease.

27.8 INDEX.

The index preceding this Lease, but under the same cover, is for the purpose of

convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

27.9 LAWS OF FLORIDA APPLY.

This Agreement shall be governed by the laws of the State of Florida regardless of the diversity of citizenship of the parties in interest or the place of execution of this Lease.

27.10 COVENANTS RUNNING WITH THE LAND.

That all covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives and assigns of each of the parties to this Lease.

27.11 TIME IS OF THE ESSENCE.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

27.12 NOTICE.

When the parties desire to give notice unto the other or others in connection with and according to the terms of this Lease, such notice shall be given by Registered or Certified Mail, Return Receipt Requested, and shall be deemed given when it shall have been deposited in the United States Mails with sufficient postage prepaid thereon to carry it to its addressed destination, or by such conveyance then permitted by law, and the notice shall be addressed as follows:

To the Lessor: City Manager
 City of Miami Beach
 1700 Convention Center Drive
 Miami Beach, Florida 33139

and with a copy to: City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

To the Lessee: Director
Miami Beach Watersports Center, Inc.
6500 Indian Creek Drive
Miami Beach, FL 33141

Where the parties on either side, Lessor or Lessee, consist of more than one person, notice unto or default by one of the persons on that side shall constitute notice unto or default by all of the persons on that side.

27.13 ATTORNEYS' FEES.

If, in connection with the enforcement of this Lease and by reason of the Lessee's failure to keep and observe all of the covenants and conditions herein contained by the Lessee to be kept and performed, it shall be necessary for the Lessor to employ an attorney, then the Lessee shall pay the Lessor all reasonable attorneys' fees and court costs incurred and/or expended by the Lessor, including all appellate fees and costs. And conversely, if, in connection with the enforcement of this Lease and by reason of the Lessor's failure to keep and observe all of the terms, covenants and conditions herein contained by the Lessor to be kept and performed, it becomes necessary for the Lessee to employ an attorney, then the Lessor shall pay the Lessee for all reasonable attorneys' fees and court costs incurred and/or expended by the Lessee, including all appellate fees and costs. Such fees and costs shall be awarded only to the prevailing party.

27.14 VENUE.

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal

action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **Lessor and Lessee hereby knowingly and intentionally waive the right to trial by jury in any action or proceeding that Lessor and Lessee may herein after institute against each other with respect to any matter arising out of or related to this Agreement or the Demised Premises.**

27.15 LESSOR'S LIMITATION ON LIABILITY.

The Lessor desires to enter into this Agreement only if in so doing the Lessor can place a limit on Lessor's liability for any cause of action for money damages due to an alleged breach by the Lessor of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Lessee hereby expresses its willingness to enter into this Agreement with the Lessee's recovery from the Lessor for any damage action for breach of contract, or any other cause of action for money damages, to be limited to a maximum amount of Ten Thousand (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Lessee hereby agrees that the Lessor shall not be liable to Lessee for damages in an amount in excess of Ten Thousand (\$10,000.00) Dollars for any action or claim for breach of contract, or any other cause of action for money damages, arising out of the performance or nonperformance of any obligations imposed upon the Lessor by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon Lessor's liability as set forth in Florida Statutes, Section 768.28.

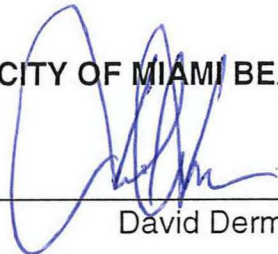
27.16 RECORDING IN THE PUBLIC RECORDS.

A memorandum of agreement reflecting the execution hereof, and any modifications, assignments or transfers of this Lease, shall be recorded in the public records of Miami-Dade County, Florida, at Lessee's cost.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto affixed their respective hands and seals at the place, and on the day and date first hereinabove written. Signed, sealed and delivered in the presence of:

Attest:


City Clerk

CITY OF MIAMI BEACH

David Dermer, Mayor

Witnesses:

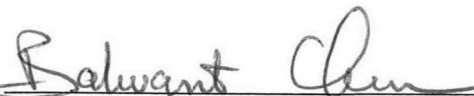
MIAMI BEACH WATERSPORTS CENTER, INC.
a Florida corporation not-for-profit


Signature

X 
Signature

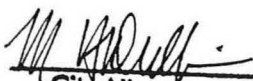
Iro Nusbach
Print Name

Ronald W. Shavers
Print Name/Title


Signature

Balwant Cheema
Print Name

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 7-3-02
City Attorney Date

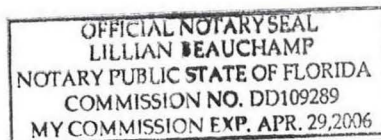
STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE) SS:

The foregoing instrument was acknowledged before me this 22 day of August, 2002, by Mayor David Dermer and Robert Parcher, City Clerk, or their designees respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed the instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 22 day of August, 2002.

Lillian Beauchamp
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

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



The foregoing instrument was acknowledged before me this 7th day of August, 2002, by Ronald W. Shane, on behalf of the MIAMI BEACH WATERSPORTS CENTER, INC. a Florida corporation not-for-profit, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed the instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 7th day of August, 2002.

Balwant Cheema
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

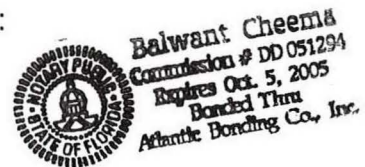


Exhibit "A"

THIS IS A SKETCH OF AN AS-BUILT SURVEY OF:

PARCEL "A"

A Westerly part of Lots 17 through 21, Block 3, Amended Second Ocean Front Subdivision, recorded in Plat Book 28 at page 28 of the public records of Dade County, Florida. Said Part described as follows:

Commence (P.O.C.) at the Southeasterly corner of the above referenced Lot 17 and run N.89°14'30"W. along the Southerly line of said Lot 17, a distance of 131.364 feet; Thence run N.8°03'52"W., a distance of 57.75 feet to a point in Lot 17, said point being the Point of Beginning (P.O.B.); Thence continue N.8°03'52"W. Lots 17 through 21 inclusive of said Block 3, a distance of 321.74 feet to a point on the Northerly line of said Lot 21; Thence run N.89°14'30"W. along the Northerly line of said Lot 21, a distance of 47.041 feet to the Northwesternly corner of Lot 21; The following 5 courses are along the Westerly line of referenced Lots 17 through 21 of said Block 3. Thence run S.8°04'57"E., a distance of 75.90 feet; Thence run S.9°41'26"E., a distance of 76.264 feet; Thence run S.9°05'34"E., a distance of 76.123 feet; Thence run S.8°58'20"E., a distance of 76.094 feet; Thence run S.5°07'08"E., a distance of 18.028 feet to a point on the Westerly line of said Lot 17; Thence run S.89°14'30"E., parallel to the Southerly line of said Lot 17, a distance of 43.163 feet to the Point of Beginning (P.O.B.). Area described contains 14,260 square feet, more or less.

PLUS:

A parcel of land in Indian Creek (Now Filled) adjacent and contiguous with the Westerly boundary of Block 3 of the above described subdivision, conveyed by Deed from the Trustees of the Internal Improvement Fund of the State of Florida by Deeds 19938 and 19940. Said land described as follows:

Commence (P.O.C.) at the Southeasterly corner of referenced Lot 17 and run N.89°14'30"W. along the Southerly line of Lot 17 and its production Westerly, a distance of 213.51 feet to the Westerly line of the land described in the above referenced deeds. The following 4 courses are along the said Westerly line. Thence run N.7°25'44"W., a distance of 57.654 feet to the Point of Beginning (P.O.B.); Thence continue N.7°25'44"W., a distance of 93.89 feet; Thence run N.8°39'00"W., a distance of 152.045 feet; Thence run N.7°57'12"W., a distance of 75.875 feet to a point on the production Westerly of the Northerly line of the above referenced Lot 21; Thence run S.89°14'30"E. along the said Westerly production of Lot 21, a distance of 34.827 feet to the Northwesternly corner of said Lot 21. The following 5 courses are along the Westerly line of referenced Lots 17 through 21, Block 3. Thence run S.8°04'57"E., a distance of 75.90 feet; Thence run S.9°41'26"E., a distance of 76.264 feet; Thence run S.9°05'34"E., a distance of 76.123 feet; Thence run S.8°58'20"E., a distance of 76.094 feet; Thence run S.5°07'08"E., a distance of 18.028 feet to a point in said Lot 17; Thence run N.89°14'30"W., parallel to the Southerly line of referenced Lot 17, a distance of 38.336 feet to the Point of Beginning (P.O.B.). Land described contains 11,596 square feet, more or less.

Total Area of the above described Parcel is 25,856 square feet, more or less, or 0.594 acres, more or less.

Exhibit "B"

PARCEL "B"

An Easterly part of Lot 21 and 22, Block 3, AMENDED SECOND OCEAN FRONT SUBDIVISION, recorded in Plat Book 28 at Page 28 of the Public Records of Miami-Dade County, Florida, said land described as follows:

Commence (point of commencement) at the Southeasterly corner of Lot 17, Block 3 and run N. 89°14'30" W. along the Southerly line of Lot 17 a distance of 30.084 feet to the Westerly Right-of-Way line as it now exist of Indian Creek Drive ; Thence continued along the southerly line of Lot 17, N. 89°14'30" W. a distance of 183.426 feet to the Westerly boundary of that line described in Deeds 19938 and Deed 19940 from the Internal Improvement Fund, State of Florida. Thence run N. 7°25'44" W. along said Westerly line a distance of 57.654 feet ; thence continued along said line N. 75°25'44" W. a distance of 93.89 feet ; thence continue along said Westerly line N. 8°39'00" W. a distance of 152.045 feet to a point ; Thence continue along the said Westerly boundary N. 7°57'12" W. a distance of 75.875 feet described in Deed 19940 to the Northerly line of Lot 21, Block 3 of the above described subdivision extended Westerly ; Thence run S. 89°14'30" E. along the Northerly line of Lot 21 on its extension Westerly a distance of 81.868 feet to the Northwestern corner of that parcel shown hereon as parcel "B" and the Point of Beginning (P.O.B.) of parcel "B" ; Thence continue along the Northerly line of Lot 21 a distance of 127.96 feet to a point 49.002 feet Westerly of the original NE corner of said Lot 21 due to the street widening of Indian Creek Drive ; Thence run S. 0°04'00" W. a distance of 79.50 feet to a point, said point being 4.50 feet South of the Northerly line of Lot 20 ; Thence run S. 89°14'30" E. along a line parallel with and 4.50 feet South of the dividing line between Lots 20 and 21, a distance of 99.60 feet ; Thence run S. 31°42'18" W. a distance of 24.65 feet to the Easterly line of referenced Parcel "A" ; Thence run N. 8°03'52" W. along the Easterly line of Parcel "A" a distance of 101.85 feet to the Point of Beginning (P.O.B.).

Parcel "B" contains 9,832 square feet \pm or 0.226 \pm acres

Exhibit "C"

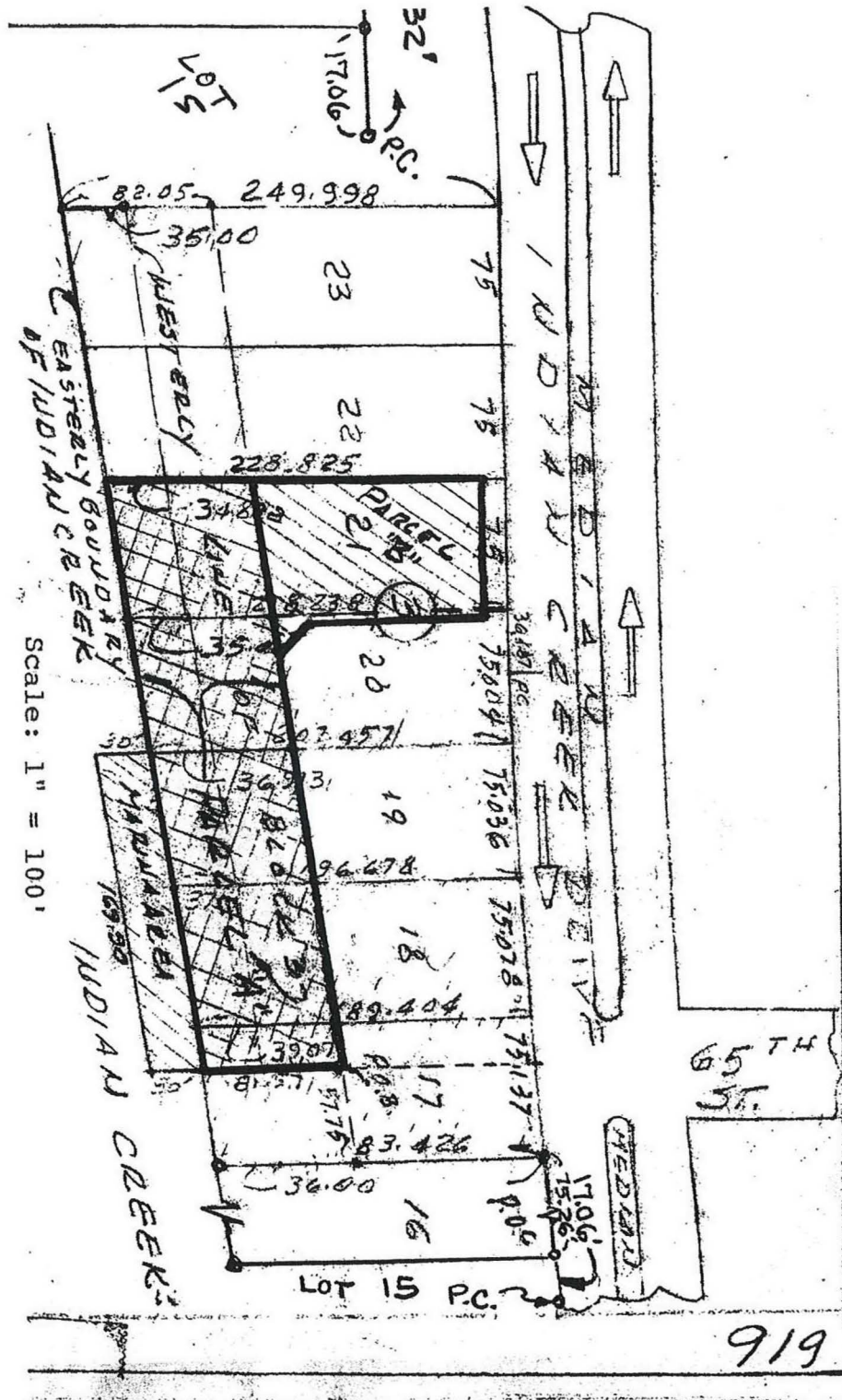


Exhibit "D"

DESIGN REVIEW BOARD City of Miami Beach, Florida

MEETING DATE: July 11, 2001

IN RE: The Application for Design Review Approval for a one (1) story, detached addition to an existing rowing center.

FILE NO: 14437

PROPERTY: 6500 Indian Creek Drive

ORDER

The applicant, Miami Beach Watersports Center, Inc., filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Design Review Criteria Nos. 3 & 4 in Section 118-251 of the Miami Beach Code.
- B. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 - 1. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The corner parapet element on the northeast side of the structure shall be simplified by eliminating the proposed step, in a manner to be approved by staff.
 - b. Existing condition and elevation drawings shall be submitted.
 - c. The proposed striped awnings on the new and existing structures shall not be permitted; such awnings shall be replaced with thin, metal eyebrows, or more shallow pitched, solid awnings.
 - d. The gateway entries at the front of the property shall be further developed, in a manner to be approved by staff.



2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated; at a minimum, such plan shall incorporate the following:
 - a. All exterior walkways shall consist of decorative pavers, set in sand or other semi-pervious material, subject to the review and approval of staff.
 - b. All landscape areas which abut driveways and parking spaces shall be defined by continuous concrete curb.
 - c. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain.
3. All building signage shall be consistent in type, composed of flush mounted, non-plastic individual letters and shall require a separate permit.
4. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.
5. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
6. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required, prior to the issuance of a building permit.
7. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.
8. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
9. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design



Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were amended by the Board, that the Application for Design Review Approval is granted for the above-referenced project subject to those certain conditions specified in paragraph B of the Findings of Fact hereof (conditions #1-9, inclusive), to which the applicant has agreed.

No building permit may be issued unless and until all conditions of approval as set forth herein have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

When requesting a building permit, three (3) sets of plans approved by the Board, modified in accordance with the above conditions, as well as annotated floor plans which clearly delineate the Floor Area Ratio (FAR) calculations for the project, shall be submitted to the Planning Department. If all of the above-specified conditions are satisfactorily addressed, the plans will be reviewed for building permit approval. Two (2) sets will be returned to you for submission for a building permit and one (1) set will be retained for the Design Review Board's file. If the Full Building Permit is not issued within one (1) year of the meeting date at which this Design Review Approval was granted and construction does not commence and continue in accordance with the requirements of the applicable Building Code, the Design Review Approval will expire and become null and void.

Dated this 25 day of JULY, 2001.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: Thomas R. Mooney
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

Approved As To Form:
Legal Department: [Signature]

Filed with the Clerk of the Design Review Board on 7/24/01 (7-23-01)
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**DESIGN REVIEW BOARD
City of Miami Beach, Florida**

MEETING DATE: June 18, 2002

IN RE: The Application for a one (1) year Extension of Time to obtain a Building Permit for a previously issued Design Review Approval for a one (1) story roof-top addition to an existing rowing center, as well as a one (1) story detached structure.

FILE NO: 14437

PROPERTY: 6500 Indian Creek Drive

ORDER

The applicant, Miami Beach Watersports Center, Inc., filed a request with the City of Miami Beach Planning Department for an extension of time to obtain a Building Permit for a previously issued Design Review Approval.

The City of Miami Beach's Design Review Board makes the following FINDING OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

The applicant submitted information establishing, among other things, that there were delays encountered in the approval and permitting process. The foregoing constitutes good cause for granting a one (1) year extension of time to the requirement that a Full Building Permit be obtained within one (1) year of the original Design Review Approval.

IT IS HEREBY ORDERED, based upon the foregoing finding of fact and the staff report and analysis, which is adopted herein, including the recommendation, that a one (1) year extension of time to obtain a full building permit (which one [1] year period shall run from the expiration date of the original approval, which is July 11, 2002) is granted for the above-referenced project conditioned upon the following, to which the applicant has agreed:

1. A full building permit, not a foundation or shell permit, for the project shall be obtained by July 11, 2003.
2. Construction shall commence and continue in accordance with the applicable Building Code.
3. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

No building permit may be issued unless and until all conditions of approval as set forth in this Order and the Order for the July 11, 2001 approval have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or