

**PHASED LEASE AGREEMENT # \_\_\_\_\_**

THIS PHASED LEASE AGREEMENT # \_\_\_\_\_ (“**Lease**”) is made and entered into at Fort Lauderdale, Broward County, Florida as of the Effective Date, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of Florida, hereinafter referred to and identified as the “**LESSOR**,” or the “**CITY**.”

and

\_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to and identified as the “**LESSEE**.”

(The use herein of the plural shall include the singular, and the use of the singular shall include the plural; the use of the masculine gender shall include all genders, and the use of the neuter gender shall include all genders; the use of the words “**LESSOR**” and “**LESSEE**” shall include their heirs, representatives, successors, grantees and assigns.)

**PREAMBLE**

WHEREAS, the City of Fort Lauderdale received a deed on August 27, 1947 from the United States of America for certain real property known as the Bahia Mar, which deed is recorded in Broward County Official Records Book 604 at Page 529; and

WHEREAS, LESSOR and Rahn Bahia Mar, L.L.C. (“**Master Lessee**”) executed that certain Master Lease Agreement dated \_\_\_\_\_, 202\_\_, as amended (“**Master Lease**”) with respect to the “**Premises**” (as defined in the Master Lease); and

WHEREAS, the Premises known as the Bahia Mar Complex presently includes all of the “**Property**” as defined and described by this Lease; and

WHEREAS, LESSOR and LESSEE desire to enter into this Lease with respect to the Property; and

WHEREAS, pursuant to Section 8.06 of the Charter of the City of Fort Lauderdale, the City Commission of Fort Lauderdale, Florida has approved the terms and conditions of this Lease, including but not limited to those that apply during the Initial Term and the Extended Term thereof; and

WHEREAS, by Resolution No. \_\_\_\_\_ adopted at its meeting of \_\_\_\_\_, 20\_\_ [the date of City Commission Approval], the City Commission of LESSOR authorized the Master Lease, and pursuant to the Master Lease, authorized the execution of this Lease in the manner provided herein (“**City Commission Approval**”); and

WHEREAS, LESSOR, LESSEE, and Master Lessee have simultaneous with the execution of this Lease, agreed that the Property is hereby removed from the Master Lease and that the Lease of the Property shall be governed by the terms and provisions of this Lease between LESSOR and LESSEE.

WHEREAS, LESSEE shall have the right to have portions of the Property developed as buildings which may or may not have residential, retail, commercial, or other uses located therein, as such building areas are shown on the Site Plan, as amended from time to time. The Parties acknowledge that as of the Commencement Date of this Lease, LESSOR and LESSEE have approved the development of the Proposed Improvements as contemplated by the Site Plan, but LESSEE may not have obtained all necessary governmental approvals from the City in order to develop such Proposed Improvements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that by virtue of the representations herein made, and not otherwise, LESSOR does hereby lease and let to LESSEE the Property.

## **ARTICLE 1** **PROPERTY**

Section 1.1 Property. The Property demised under this Lease shall be subject to adjustment as provided in this Lease.

Section 1.2 Adjustments. The legal descriptions for the Property is presently coterminous with the current area planned for the Phased Building (including structural components, to the extent applicable) to be located thereon as contemplated by the Site Plan. The Parties hereby recognize that the legal description of the Property is presently shown on (i) **Exhibit A**, which legal is for the ground upward as to the area extending 5' beyond the outside boundary of the building pad of such Phased Building (including structural components to the extent applicable) (the "**Base Portion**") and (ii) **Exhibit A-1**, which legal is for the air rights from an elevation specified above the ground surface as to those portions of such Phased Building that overhang beyond the Base Portion (the "**Overhang Property**") (each, a "**Legal Description**"). The Legal Description may need to be adjusted from time to time so as to be coterminous with the actual area of such Phased Building intended to be constructed upon such Property based upon (i) actual field measurements (for nominal adjustments); or (ii) revisions to the Site Plan as approved by applicable governmental authorities, and that such adjustments will necessarily cause some adjustments to the legal description of the Property and possibly, other adjoining portions of the Premises. To the extent that LESSEE determines that the area needed to comprise the Property for such Phased Building needs to be modified or otherwise adjusted as a result of Governmental Approvals or other reasons affecting such legal description, then LESSEE will prepare a written request to the City Manager and Master Lessee for a modification, which shall include a sketch reflecting the modification, along with the revised sketch and legal description for the Property and corresponding changes to the sketch and legal description of the Property ("**Revised Legal Description**") which Revised Legal Description shall be subject to the review and approval by the City Manager (which approval shall not be unreasonably denied, withheld, conditioned, or

delayed) and the Master Lessee. Upon City Manager's and the Master Lessee's approval of such Revised Legal Description: (w) such Revised Legal Description shall become the Legal Description for both the Property and the legal description of the Property and the Premises shall be amended to conform to same; (x) the Revised Legal Description shall be a Permitted Change; and (y) LESSOR, Master Lessee and LESSEE will execute and record any applicable modification to the Memorandum of Lease, this Lease and the Master Lease to reflect such Revised Legal Description. In the event of a request for a modification of the legal description for the Property, then prior to submitting such request to LESSOR, such request shall be signed by LESSEE and the Master Lessee.

**ARTICLE 2**  
**MUTUAL REPRESENTATIONS AND WARRANTIES**

The parties hereto mutually represent, warrant, and disclose to each other the following:

Section 2.1 LESSOR is a municipal corporation initially organized and existing pursuant to Chapter 57-1322, Special Acts of 1957, Vol. II, Part I, at page 1043 (effective May 6, 1957), as of September 1, 1962 (hereinafter, Statutory Charter). The Statutory Charter was repealed by operation of City of Fort Lauderdale Ordinance No. C-84-67, and a new Charter was adopted on second reading on October 2, 1984, and by a referendum vote of the electorate on November 6, 1984, as heretofore and hereafter amended from time to time (as amended, hereinafter referred to as "**Charter**").

Section 2.2 All steps, acts, and conditions required by the Charter of the LESSOR to be done as a condition precedent to the authorization of this Lease as of the date of City Commission Approval have been done, and the LESSOR has full authority to enter into this Lease.

Section 2.3 All steps, acts, and conditions required by the organizational and other documents creating and binding on LESSEE to be done as a condition precedent to the execution of this Lease have been done, and LESSEE has full authority to enter into this Lease.

Section 2.4 The Parties mutually represent and warrant unto each other that this Lease constitutes the final repository of all agreements of the Parties relating hereto, and that there are no other verbal representations, warranties, agreements, or conditions with respect to the leasing of the Property, other than as set forth in this Lease.

Section 2.5 Each Party has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the individuals signing this Lease on behalf of each Party have the authority to bind the Party on whose behalf they signed and to enter into this transaction and each Party has taken all requisite action and steps to legally authorize it to execute, deliver, and perform pursuant to this Lease.

Section 2.6 To the extent LESSEE submits portions of the Property to the form of ownership under the Act, that such Regime, if any, shall be leasehold Regime subject and subordinate to this Lease, and the Regime Documents shall be reviewed and approved by City Manager for the limited purpose provided in this Lease. The Regime Documents shall provide

that upon the expiration of the Term, the Regime shall terminate. As between LESSOR and LESSEE, LESSEE shall be responsible and liable for ensuring that all legal requirements under the Act are met and satisfied for the creation of the leasehold Regime upon the Property pursuant to the Act, and LESSOR shall have no responsibility or liability for ensuring that all legal requirements are met and satisfied for the creation of any such Regime upon the Property under the Act or the Regime Documents.

### **ARTICLE 3** **DEFINED TERMS**

The following terms, as used and referred to herein, shall have the meaning as set forth below:

“**Act**” shall mean Chapter 718, Florida Statutes as such Chapter may be amended or replaced as of the time of submission of the Branded Unit to the Act.

“**Additional Rent**” shall mean all monetary obligations of LESSEE to LESSOR (other than Annual Rent, Sales Consideration Fee and Transfer Fee(s)) payable pursuant to this Lease.

“**Adjustment Date**” shall mean on the first January 1 occurring after the earlier to occur of (i) three (3) years after the Initial Rent Payment Date or (ii) the date 50% of the Branded Residential Units have been conveyed from the Original Branded Residential Unit Owner to Initial Third Party Branded Residential Unit Owner(s) (“**First Adjustment Date**”), and on January 1 of each and every year thereafter during the Term.

“**Affiliate**” shall mean a Person who owns directly or indirectly (i) fifty-one percent (51%) or more of equity securities of the specified person with respect to whether or not a Sublessee is an Affiliate for purposes of a Fair Market Rent determination for a Sublease with an Affiliate as provided in the definition of Gross Revenue; and (ii) fifty-one percent (51%) or more of equity securities of the specified person as to other determinations of Affiliates, including with regard to assignment or subleases.

“**Annual Payment Date**” shall mean January 31 of each year of the Term for the prior calendar year (or part thereof if applicable) from and after the Commencement Date. The Commercial Annual Rent under this Lease and the “Percentage Sum” (as provided in the Master Lease) shall be prorated with the Master Lessee being responsible to report Gross Revenue prior to the Commencement Date as set forth in the Master Lease and COMMERCIAL LESSEE shall report the Gross Revenue (as provided in this Lease) and each anniversary thereafter (as to the Commercial Space or the Commercial Units, as applicable).

“**Annual Rent**” shall mean the (i) Residential Annual Rent, and (ii) Commercial Annual Rent.

“**Applicable Approval(s)**” shall mean all Governmental Approvals (with all appeal periods having expired) required by LESSEE for the Proposed Improvements and any other

improvements requiring such Governmental Approvals to the Property, including, but not limited to zoning, site plan approval, and building permits for the Proposed Improvements.

“**Applicable Percentage**” shall mean during each Lease Year of the Term, 4.25% until the Start Date, whereupon the Applicable Percentage shall be reduced to 3.75% from the Start Date until the Completion Date, at which time the Applicable Percentage shall be increased up to 5.5%.

“**Approved Plans**” shall mean the construction plans and specifications used to obtain a building permit (as amended from time to time) for improvements (other than interior improvements or improvements to the Units) to the Property and the Phased Building, as applicable, that are substantially consistent with the Site Plan, and that have received the review and, if acceptable, the prior written approval of LESSOR as required by this Lease.

“**Association**” shall mean the condominium association created under the Regime Documents.

“**Association Assignment**” shall have the meaning set forth in Section 22.1 of this Lease.

“**Authorized Representative**” shall mean (i) as to LESSOR, the City Manager or such other person(s) as may be designated by the City Manager from time to time in writing to LESSEE; and (ii) as to LESSEE, James D. Tate, J. Kenneth Tate, or such other Person(s) as LESSEE may designate to LESSOR in writing from time to time.

“**Bahia Mar Complex**” shall mean the property described on Exhibit B.

“**Base Portion**” shall have the meaning set forth in Section 1.2.

“**Boat Show**” shall mean the Fort Lauderdale International Boat Show, which typically runs 5 consecutive days each year in the Fall, and includes multiple locations within the City of Fort Lauderdale, including the Bahia Mar Complex. Typically featured at the Bahia Mar Complex are a range of large boats, such as yachts and superyachts, sport fishers, high performance boats, cabin cruisers, along with retailers, concessions, and food and beverages. For purposes of this Lease, the Boat Show includes the forgoing description, and specifically its activities at the Bahia Mar Complex.

“**Boat Show Event of Default**” shall mean a default by or through any Boat Show Tenant of their obligations, representations, or covenants under the Boat Show Lease not cured within the cure period set forth in Section 18(a) of the Boat Show Lease.

“**Boat Show Landlord**” shall mean Rahn Bahia, Mar L.L.C. and its successors and assigns of the Boat Show Lease.

“**Boat Show Lease**” shall mean the Extended Boat Show Lease dated June 6, 2017 between Boat Show Landlord and the Boat Show Tenant as may be amended from time to time.

**“Boat Show Tenant”** shall mean the Marine Industries Association of South Florida, Yachting Promotions Inc., and/or their respective successors and permitted assigns pursuant to the Boat Show Lease.

**“Branded”** shall mean each such Branded Apartment Unit or Branded Hotel Unit shall be partially managed by a four (4) star or higher hotel chain. Such management services provided by such hotel chain shall include access to a centralized rental reservation system for each Unit Owner and may include, at the option of each Association, management of recreation facilities, food & beverage outlets, fitness and/or health care related facilities, etc.

**“Branded Apartment Unit”** shall mean each residential dwelling unit located in the Proposed Improvements existing prior to the recording of the Regime Documents, whereby such areas would become Branded Residential Units upon recording of the Regime Documents.

**“Branded Hotel Units”** shall mean each hotel room, if any, within the Property which is submitted to the Regime under the Act.

**“Branded Residential Unit”** shall mean: (i) each Branded Apartment Unit submitted to the Regime pursuant to the Regime Documents and (ii) each Branded Hotel Unit submitted to the Regime pursuant to the Regime Documents.

**“Branded Residential Unit Owner”** shall mean the owner of the Branded Residential Unit.

**“Branded Unit Assessments”** shall mean (i) all common expenses as set forth in the Regime Documents and as may be provided by law, (ii) an assessment against each Branded Residential Unit for the Residential Annual Rent, (iii) an assessment against each Commercial Unit for the Commercial Annual Rent and (iv) any other assessments set forth in the Regime Documents.

**“City”** shall mean the City of Fort Lauderdale, Florida.

**“City Commission Approval”** shall have the meaning set forth in the Recitals.

**“City Governmental Approval”** shall mean the approval by the City in its capacity as a governmental authority to the extent such governmental approval is generally applicable as opposed to approval by LESSOR in its proprietary function as LESSOR under this Lease.

**“City Manager”** shall mean the City Manager of the City of Fort Lauderdale or other City official who may hereafter replace such office.

**“Commencement Date”** shall mean the Effective Date.

**“Commercial Annual Rent”** shall mean the Applicable Percentage of the amount of the Gross Revenue derived from such Commercial Space or Commercial Unit (as applicable) by the COMMERCIAL LESSEE for the prior calendar year (or prorated portion of a calendar year if less than one year).

**“COMMERCIAL LESSEE”** shall mean LESSEE as long as the Property is not submitted to Regime and the Commercial Unit Owner once the Commercial Space is part of the Regime.

**“Commercial LESSEE Appraiser”** shall have the meaning set forth in the definition of Fair Market Value Rent.

**“Commercial Space”** shall mean the area located in the Proposed Improvements which is used as a restaurant, retail, office, or other commercial space (excluding Branded Residential Units and Branded Apartment Units, Hotel, Branded Hotel Units, parking, and Common Areas related thereto) prior to the recording of the Regime Documents, whereby such space would be the Commercial Unit upon recording of the Regime Documents.

**“Commercial Unit”** shall be each of the commercial condominium units created pursuant to the Regime Documents.

**“Commercial Unit Owner”** shall mean the owner of a Commercial Unit. Any tenant of a Commercial Unit Owner shall be considered a Sublessee.

**“Common Areas”** or **“Common Elements”** shall mean the common areas or common elements of the Regime created pursuant to the Regime Documents.

**“Community Trust Entity”** shall mean the Community Foundation of Broward, the United Way of Broward, and/or any other organization as mutually agreed to in writing by LESSOR and LESSEE (**“CTE”**) who will receive the Community Trust Sales Fee and split the proceeds of all receipts into separate trust funds for the benefit of the following needs of the residents of the City of Fort Lauderdale: (i) affordable housing/homelessness programs, (ii) inner City parks programs, (iii) environmental/sustainability causes; and (iv) such other causes as mutually agreed to in writing by the LESSOR and LESSEE. The trust funds will be used to support such programs/causes and not for major capital improvements. An advisory board of no more than five residents of the City will be responsible for making recommendations to the CTE on where and how often said trust funds should be disbursed pursuant to these parameters. The Master Lessee and the City hereby agree to work closely together to finalize specific trust fund documents including the makeup of the advisory board, the splitting of contributed funds between the applicable trust funds, and minimum annual distributions of such funds.

**“Community Trust Sales Fee”** shall be an amount equal to 0.25% of the Net Sales Proceeds in connection with the initial conveyance of title of such Branded Residential Unit from the Original Branded Residential Unit Owner to the Initial Third Party Branded Residential Unit Owner which shall be paid to the Community Trust Entity at the closing of such Branded Residential Unit.

**“Community Trust Transfer Fee”** shall mean an amount equal to 0.125% of the Net Sales Proceeds in connection with any conveyance of a Conveyed Branded Residential Unit which shall be paid to the Community Trust Entity at the closing of such Conveyed Branded Residential Unit. No Community Trust Transfer Fee shall be payable in connection with the conveyance of a Conveyed Branded Residential Unit (i) to a person or persons related by blood, marriage, or

adoption to the transferor (“**Related Person(s)**”), or (ii) for estate planning purposes of the transferor (as in the case of a transfer to a trustee for the benefit of the transferor or Related Person(s)).

“**Completion Date**” shall mean the earlier of (a) the date of the final certificate of occupancy (or similar permit) for the Proposed Improvements or (b) the date which is the 12<sup>th</sup> anniversary of the Start Date, subject to extension due to a Force Majeure Event.

“**Conveyed Branded Residential Unit**” shall mean each Branded Residential Unit after having been initially conveyed by the Original Branded Residential Unit Owner (or by a lender of the Branded Residential Unit Owner who acquires such Branded Residential Unit by foreclosure or deed in lieu of foreclosure) to a third-party purchaser of such Branded Residential Unit (but shall not include the transfer of the Branded Residential Unit in connection with a foreclosure of the Leasehold Mortgage encumbering the Property).

“**CPA Firm**” shall mean an independent firm of certified public accountants licensed by the State of Florida.

“**CPI Adjustment**” shall mean the Residential Annual Rent then in effect on the day immediately preceding each Adjustment Date shall be multiplied by the percentage where the numerator is the CPI Index number in effect on October 1<sup>st</sup> immediately prior to such Adjustment Date and the denominator is the CPI Index number in effect on October 1<sup>st</sup> of the prior year but in no event shall any such CPI Adjustment be less than an increase of 1% nor more than an increase of 3%.

“**CPI Index**” shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for all items (U.S. City Average) published by the Bureau of Labor Statistics, U.S., U.S. Department of Labor (1967 equals 100). If the Bureau of Labor Statistics shall ever cease to compile or publish the CPI-U, then CPI Index shall thereafter mean such other index of process published by the U.S. Government as most nearly approximates the CPI-U now published.

“**Cure Period**” shall mean the cure periods provided in Article 17.

“**Default Rate**” shall mean twelve percent (12%) per annum simple interest.

“**Effective Date**” shall mean the last day this Lease is signed by LESSOR and LESSEE.

“**Environmental Agencies**” shall have the meaning set forth in Section 7.5 of this Lease.

“**Environmental Agency**” means a governmental agency at any level of government (i.e. municipal, County, district, State, or federal) having jurisdiction to define Hazardous Substances and create, amend, enforce, or administer Hazardous Substances Laws; and additionally, the term as used herein shall also include a court of competent jurisdiction when used as a forum for enforcement or interpretation of Hazardous Substances Laws.

“**Event of Default**” shall mean any default by LESSEE of its obligations under this Lease not cured within the applicable Cure Period for such default under this Lease.

**“Estoppel Statements”** shall have the meaning set forth in Section 32.18.

**“Excluded Revenues”** shall have the meaning set forth in the definition of Gross Revenues.

**“Extended Term”** shall have the meaning in Section 4.2 of this Lease.

**“Fair Market Value Rent”** shall be the amount of rent in effect on the commencement date of such lease representing at least ninety percent (90%) of the amount of rent that a third party tenant would pay a third party landlord for the lease of comparable space then being determined, taking into consideration, the amount of tenant improvement allowance being provided, brokerage commission being paid, age of the premises, location of the premises, term of such lease, and other applicable considerations in determining fair market value. The Parties hereby agree that in connection with each lease in which the Fair Market Value Rent needs to be determined, LESSOR and COMMERCIAL LESSEE will attempt to agree between themselves as to the Fair Market Value Rent and, to the extent LESSOR and COMMERCIAL LESSEE agree to same, such rent agreed to by LESSOR and COMMERCIAL LESSEE shall be deemed to be the Fair Market Value Rent for such lease. In the event LESSOR and COMMERCIAL LESSEE are unable to reach agreement as to the Fair Market Value Rent for such lease within thirty (30) days after written request by either party to the other, then the determination of the Fair Market Value Rent for such lease shall be determined as follows:

- (i) Within ten (10) business days after the failure of LESSOR and COMMERCIAL LESSEE to agree on the Fair Market Value Rent for such lease, LESSOR shall appoint an MAI appraiser having at least ten (10) years’ experience appraising commercial property in the Broward County area that has not performed appraisal services for LESSOR in the last five (5) year period prior to such determination (**“LESSOR Appraiser”**) and COMMERCIAL LESSEE shall appoint an MAI appraiser having had at least ten (10) years’ experience appraising commercial property in the Broward County area who has not performed appraisal services for COMMERCIAL LESSEE within the five (5) year period prior to such determination (**“COMMERCIAL LESSEE Appraiser”**). In the event either LESSOR or COMMERCIAL LESSEE fails to timely appoint such MAI appraiser, then the MAI appraiser of the Party who timely appoints its MAI appraiser shall, acting alone, determine such Fair Market Value Rent. Within thirty (30) days of the appointment of LESSOR Appraiser and/or COMMERCIAL LESSEE Appraiser, LESSOR Appraiser and COMMERCIAL LESSEE Appraiser shall each submit their determination of the Fair Market Value Rent in question. In the event either Party’s MAI appraiser fails to provide its determination of Fair Market Value Rent within such thirty (30) day period, then the Fair Market Rent of the MAI appraiser who timely provides its determination of Fair Market Rent shall be deemed to be the Fair Market Value Rent. If neither Party timely appoints its MAI appraiser or if both MAI appraisers fail to timely provide its determination of Fair Market Value Rent, then the Parties shall again restart the process to determine Fair Market Value Rent. To the extent that the Fair Market Value Rent as determined by LESSOR Appraiser and COMMERCIAL LESSEE Appraiser are within ten

percent (10%) of each other, the Fair Market Value Rent shall be the average of the Fair Market Value Rent as determined by LESSOR Appraiser and COMMERCIAL LESSEE Appraiser.

- (ii) If the Fair Market Value Rent as determined by LESSOR Appraiser and COMMERCIAL LESSEE Appraiser are not within ten percent (10%) of each other, then LESSOR Appraiser and COMMERCIAL LESSEE Appraiser shall jointly select a third appraiser within ten (10) days of request by LESSOR or COMMERCIAL LESSEE to do so. If they fail to agree to such third appraiser within such ten (10) day period, then such third appraiser shall be selected by COMMERCIAL LESSEE and LESSOR, and if they fail to agree on a third appraiser, then in accordance with the rules of the American Arbitration Association, a third appraiser shall be selected. The third appraiser in all cases shall be an MAI appraiser having at least ten years' experience appraising commercial property in the Broward County area who has not performed appraisal services for LESSOR or COMMERCIAL LESSEE within the five year period immediately prior to the date of such determination ("**Third Appraiser**"). Upon appointment of the Third Appraiser, such Third Appraiser shall make a determination of the Fair Market Value Rent within thirty (30) days of being appointed and which Fair Market Value Rent shall no higher than the highest Fair Market Value Rent and no lower than the lowest Fair Market Value Rent of LESSOR Appraiser and COMMERCIAL LESSEE Appraiser. The Fair Market Value Rent shall be the average of the two closest appraised values of Fair Market Value Rent between LESSOR Appraiser, COMMERCIAL LESSEE Appraiser and the Third Appraiser. COMMERCIAL LESSEE shall pay for the COMMERCIAL LESSEE Appraiser, LESSOR shall pay for LESSOR Appraiser and the costs of any arbitration and the Third Appraiser shall be split equally between LESSOR and COMMERCIAL LESSEE or, to the extent LESSOR desires that COMMERCIAL LESSEE pays the full cost of such arbitration and Third Appraiser, then one-half (1/2) of the cost of such arbitration and the Third Appraiser may be offset by COMMERCIAL LESSEE against Commercial Annual Rent due under this Lease.

**"Force Majeure Event"** shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) a regional or national disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to LESSEE's failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of LESSEE. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event.

**“Governmental Approvals”** shall mean all governmental and quasi-governmental approvals from applicable city, county and other agencies and authorities required to develop the Property pursuant to the Site Plan, including, but not limited to, site plan approvals, plat approvals and recordation, public dedications, environmental approvals, land use approvals, zoning approvals, building permits, certificates of occupancy, and all other governmental approvals required in connection with the development of the Proposed Improvements contemplated by the Site Plan (and the expiration of all appeal periods with respect thereto) and other matters pertaining to the Property.

**“Gross Revenue”** means the following derived from each Commercial Space or Commercial Unit on the Property:

(a) Notwithstanding anything contained herein to the contrary, with respect to subleased space, an amount equal to the base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by the Sublessee to LESSEE (i) if the Sublessee is not an Affiliate of LESSEE, or (ii) if the Sublessee is an Affiliate of LESSEE, then the amount of base annual rent (excluding taxes, insurance, common area charges and additional rent) paid by such Sublessee to LESSEE, provided the annual base rent (excluding taxes, insurance, common area charges and additional rent) payable under such Sublease shall be at a Fair Market Value Rent for such space.

(b) The following shall be applicable (i) if the COMMERCIAL LESSEE shall operate the business itself rather than sublease its Commercial Space or Commercial Unit, or (ii) if such sublease is to an Affiliate of such COMMERCIAL LESSEE at less than a Fair Market Value Rent, to wit:

Except as otherwise provided in this definition of Gross Revenue, the total of all revenues, rents, income and receipts received by COMMERCIAL LESSEE from any Person(s) whomsoever (less any refunds) of every kind derived directly or indirectly from the operation of the Commercial Space or Commercial Unit (as applicable), including, without limitation, income (from both cash and credit transactions and before commissions) from the following activity on the Commercial Space or Commercial Unit (as applicable):

(i) the rental of rooms, convention and meeting room facilities, banquet or other facilities (including facilities for the Boat Show which is annually held in the Commercial Space or Commercial Unit (as applicable)), exhibits, sales displays or advertising space of every kind, provided that as to the rental of convention, meeting and banquet room facilities and facilities for the Boat Show, where such facilities are rented to Non-Affiliated Persons, and where such Non-Affiliated Persons also conduct sales in conjunction with the rental fee paid for the rental of the aforementioned facilities, the Gross Revenue shall be limited to the rental fee paid to the COMMERCIAL LESSEE for the rental of the aforementioned facilities and shall not include the sales or revenues of such Non-Affiliated Persons renting the aforementioned facilities;

(ii) Food, beverage (including alcoholic beverages sold by the drink or bottle), convention and banquet sales, including room service, and sales from vending machines provided that in room mini-bars shall be calculated on a net basis, wherein net mini-bar revenues shall be

defined as gross mini-bar revenue, less any lease payment made by the COMMERCIAL LESSEE to a Person, with such net basis being subject to the Limitation on Net Income Rule and subject to the terms of subsection (c)(ii), where applicable, whereby the rent under any such food and beverage lease/concession agreement/management agreement will be included in Gross Revenue but Gross Revenues will not include the food and beverage sales received by the operator;

(iii) Net Income received from Concessions, if any, subject to the Limitation on Net Income Rule;

(iv) Net Income, if any, derived from telephone, cable television and telecommunication services, movie rentals, audio-visual services, and valet parking, such net income being subject to the Limitation on the Net Income Rule;

(v) Personal services, laundry services;

(vi) Wholesale and/or retail sales of goods or services, including merchandise;

(vii) Proceeds, if any, from business interruption or other loss of income insurance;

(viii) COMMERCIAL LESSEE's portion of any eminent domain award which is awarded to the COMMERCIAL LESSEE, in excess of the aggregate of (1) any such proceeds which are reinvested in the Property; (2) the fair market value of COMMERCIAL LESSEE's equity in the portion of the Commercial Space or Commercial Units, as applicable, which is taken; and (3) the amount, if any, used to pay any Leasehold Mortgagee whose mortgage encumbers the portion of the Commercial Space or Commercial Units, as applicable, that is taken.

(c) Gross Revenue shall not include ("**Excluded Revenue**"):

(i) Gratuities received by employees;

(ii) The portion of rent payable by a Sublessee attributable to tenant improvements given to such Sublessee under its Sublease amortized over the initial term of such Sublease at a commercially reasonable interest rate ("**Sub-Tenant Allowances**"), provided such Sub-Tenant Allowances shall only be excluded from Gross Revenue of Subleases to Affiliates of COMMERCIAL LESSEE to the extent the rent of such Sublease to an Affiliate of LESSEE is a Fair Market Value Rent;

(iii) Federal, state or municipal excise, sales, use, occupancy or similar taxes collected directly from sub-tenants, patrons, guests or otherwise, provided such taxes are separately stated;

(iv) Insurance proceeds (other than business interruption, or loss of income insurance);

(v) Proceeds from the disposition of personal property (such as furniture, fixtures and equipment no longer necessary for the operation of the Commercial Space or Commercial Unit, as applicable);

(vi) Interest income, if any;

(vii) Deposits until same are forfeited by the person making the deposit;

(viii) Advance rentals until such time that they are earned;

(ix) Any award or payment made by a governmental authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power relating to leasehold improvements and other property of COMMERCIAL LESSEE, except as provided in (b) above;

(x) Taxes, common area charges, utilities, insurance, expenses, and cure costs paid by any Sublessee to COMMERCIAL LESSEE as reimbursement or payment of such expenses;

(xi) In connection with any Sublease of portions of the Commercial Spaces or Commercial Units, as applicable, without Improvements thereon, then only the rent paid for the portion of the Commercial Spaces or Commercial Units, as applicable, being subleased shall be included in Gross Revenue and there shall be excluded from Gross Revenue, any rent which reimburses COMMERCIAL LESSEE for any tenant improvements allowance given by COMMERCIAL LESSEE to a Sublessee, amortized at a commercially reasonable interest rate over the initial term of such Sublease; or

(d) In the event that additional or new revenue-producing space or sources are created upon the Property or in the event that COMMERCIAL LESSEE, directly or indirectly, subsequently converts any space from the functions set forth in subsection (a) of this definition of Gross Revenue, to other legitimate business functions, then and in those events the Gross Revenue derived from such space or uses by COMMERCIAL LESSEE shall be included in the Gross Revenue for calculation of the Commercial Annual Rent, subject to the other provisions in this definition of Gross Revenue.

**“Hazardous Substances”** means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated by any Environmental Agency, including, without limitation, any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) radon; (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et. seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901,

et. seq. (42 U.S.C. Section 6903); (vii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et. seq. (42 U.S.C. Section 9601); or (viii) designated as a "hazardous substance" as defined in Chapter 403 (Part IV) of the Florida Statutes.

**"Hazardous Substances Laws"** shall mean all applicable municipal, County, district, State and federal laws, codes, ordinances, rules, regulations and orders, as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection or regulation, protection of air, water or other natural resources, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances.

**"Hotel"** shall mean any hotel located on the Property (as same may be modified, replaced, and/or newly constructed from time to time) but shall exclude any Branded Hotel Unit.

**"Hotel Operations"** shall mean the operation of any Hotel within the Property.

**"Improvements"** shall mean any and all buildings, pavements, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and all other structures or improvements now or hereafter constructed on the Property and all additions, alterations, modifications, renovations, and replacements thereto. The existence of the then existing Improvements shall be used for making a determination of Improvements as of the date such determination is required to be made (i.e., if there was a casualty to Improvements, then for purposes of determining what is to be repaired, would be the then existing Improvements and not Improvements to be constructed in the future).

**"Initial Rent Payment Date"** shall mean the date commencing on the later of (i) the recording of the Regime Documents in the Public Records of Broward County, Florida, and (ii) the date of the initial conveyance of title of the first Conveyed Branded Residential Unit to a third party.

**"Initial Term"** shall have the meaning set forth in Section 4.1 of this Lease.

**"Initial Third Party Branded Residential Unit Owner"** shall mean the first Branded Residential Unit Owner of a Conveyed Branded Residential Unit.

**"Lease"** shall mean this Lease, including any supplements, modifications or amendments thereof.

**"Lease Year"** means the first twelve (12) calendar months from the Commencement Date and each subsequent twelve (12) month period thereafter during the term of this Lease.

**"Leasehold Mortgage"** shall have the meaning set forth in Article 16.

**"Leasehold Mortgagee"** shall have the meaning set forth in Article 16.

**"Leasehold Mortgagee Assignee"** means the assignee of a Leasehold Mortgagee as to the leasehold interest represented by this Lease following the acquisition of such leasehold interest by

the Leasehold Mortgagee by virtue of a foreclosure action or deed-in-lieu of foreclosure or similar proceeding.

“**Legal Description**” shall mean the legal description for the Property which shall be prepared by LESSEE and reasonably approved by City Manager as same may be amended as set forth in Sections 1.2 and 1.3 of this Lease.

“**LESSEE**” shall initially mean \_\_\_\_\_ and from and after the creation of the Regime, the Association shall become LESSEE under this Lease and their respective successors and assigns.

“**LESSOR**” shall mean the City of Fort Lauderdale, its successors and assigns.

“**LESSOR Appraiser**” shall have the meaning set forth in the definition of Fair Market Value Rent.

“**LESSOR Sales Fee**” shall mean, in connection with the initial conveyance of title of each Branded Residential Unit from the Original Branded Residential Unit Owner to the Initial Third Party Branded Residential Unit Owner, 2% of the Net Sales Proceeds for such Branded Residential Unit for the Square Foot Price up to \$1,200 per Square Foot plus: (i) for each Branded Residential Unit where the Square Foot Price is more than \$1,200 per Square Foot and less than \$1,500 per Square Foot, then 3% of the Net Sales Proceeds on the portion of the Square Foot Price in excess of \$1,200 per square feet, (ii) for each Branded Residential Unit where the Square Foot Price is more than \$1,500 per Square Foot and less than \$1,800 per Square Foot, then 4% of the Net Sales Proceeds on the portion in excess of \$1,200 per square foot, or (iii) for each Branded Residential Unit where the Square Foot Price exceeds \$1,800 per Square Foot, then 5% of the Net Sales Proceeds on the portion of the Square Foot Price in excess of \$1,200 per Square Foot.

“**LESSOR Transfer Fee**” shall mean an amount equal to .375% of the Net Sales Proceeds in connection with any conveyance of a Conveyed Branded Residential Unit which shall be paid to the City at the closing of such Conveyed Branded Residential Unit. No LESSOR Transfer Fee shall be payable in connection with the conveyance of a Conveyed Branded Residential Unit (i) to a Related Person(s), or (ii) for estate planning purposes of the transferor (as in the case of a transfer to a trustee for the benefit of the transferor or Related Person(s)).

“**Limitation on Net Income Rule**” means that where Gross Revenues are predicated on Branded Residential Unit a “**Net Income**” formula for any given function, that the allowable deductible expenses under such formula shall in no event exceed the gross revenues from that function, and that no deficit of expenses over gross revenues shall be carried over from one calendar year to another.

“**Master Declaration**” shall have the meaning set forth in Section 32.2.

“**Master Lease**” shall have the meaning set forth in the Recitals.

“**Master Lessee**” shall have the meaning set forth in the Recitals.

“**Memorandum**” shall mean a memorandum of this Lease in the form of **Exhibit C** to be recorded in the Public Records of Broward County, Florida.

“**Net Income**” shall mean Gross Revenue which is net of direct expenses paid to Non-Affiliated Persons.

“**Net Sales Proceeds**” shall mean an amount equal to the purchase price of each Branded Residential Unit less reasonable and bona fide closing expenses, such as title insurance, documentary stamps, recording charges, attorneys’ fees, and brokerage commissions.

“**Non-Affiliated Persons**” shall mean a Person or Persons who are not direct Affiliates of the COMMERCIAL LESSEE of the applicable Commercial Space or Commercial Unit, as applicable.

“**Non-Disturbance Agreement**” shall mean an agreement in the form of (i) **Exhibit D-1** (as to a Sublease); (ii) **Exhibit D-2** (as to a Sub-Sublease); and (iii) **Exhibit E-1** as to Leasehold Mortgages, **Exhibit E-2** as to Sub-Leasehold Mortgages and **Exhibit E-3** as to Sub-Subleasehold Mortgages or such other forms of Non-Disturbance Agreement as LESSOR and the applicable LESSEE, Sublessee, Sub-Sublessee, Leasehold Mortgagee, Subleasehold Mortgagee, or Sub-Subleasehold Mortgagee may agree to in writing.

“**Original Branded Residential Unit Owner**” shall mean the first Branded Residential Unit Owner who recorded the Regime Documents.

“**Original Lease**” shall mean that certain Lease dated September 1, 1962, recorded in Official Records Book 2870, at Pages 530-581 of the Public Records of Broward County, Florida, as amended by instrument dated September 8, 1964, recorded in Official Records Book 2870, at Pages 582 to 583 of the Public Records of Broward County, Florida; as amended by an instrument entitled Modification of Lease dated December 7, 1971, recorded in Official Records Book 5080, at Pages 845 to 849 of the Public Records of Broward County, Florida; and further amended by that certain Amendment to Lease dated April 22, 1980, recorded in Official Records Book 8958, at Pages 334 to 338 of the Public Records of Broward County, Florida; and as assigned by that certain Assignment of Lease dated August 14, 1980, recorded in Official Records Book 9066, at Page 472 of the Public Records of Broward County, Florida; and further assigned by that certain Assignment of Lease dated May 12, 1982, recorded in Official Records Book 10204, Page 761 to 764 of the Public Records of Broward County, Florida; and further assigned to the current Master Lessee in that certain Consent to Assignment of Leasehold Interest and Assignment and Assumption of Leasehold Interest dated as of June 29, 1994, recorded in Official Records Book 22333, at Pages 886 to 893 of the Public Records of Broward County, Florida; and as amended and restated in that certain Amended and Restated Lease dated January 4, 1995, recorded in Official Records Book 23168, at Pages 347 to 395 of the Public Records of Broward County, Florida, as amended by First Amendment to Amended and Restated Ground Lease recorded in Official Records Book 50912, Page 1085 of the Public Records of Broward County, Florida, as amended and restated by this Lease.

“**Partial Release**” shall have the meaning set forth in **Section 26.11** of this Lease.

“**Party**” or “**Parties**” shall mean LESSEE or LESSOR, each individually a Party and collectively Parties.

“**Payment In Lieu Of Taxes**” shall have the meaning set forth in Article 29 of this Lease.

“**Permitted Change**” shall mean as to portions of the Property located outside the Units (a) a change to the Approved Plans which is substantially consistent with the Site Plan and required to be made to comply with applicable governmental requirements; (b) a change which involves only substituting materials; (c) any change with respect to the interior portions of the Improvements; (d) a change required by the failure of the Approved Plans to address field conditions where the change will not have a material adverse effect on the quality, appearance or function of such Improvements other than the Promenade; (e) a change which is made to correct inconsistencies in various plans and specifications; and (f) a change to the Approved Plans which is substantially consistent with the Site Plan and approved by the City Manager; and (g) a change in the legal description of the Property approved by LESSOR or City Manager pursuant to this Lease.

“**Permitted Exceptions**” shall mean (i) all matters of survey or title pertaining to the Property as of the Commencement Date; (ii) each Sublease; (iii) zoning restrictions and prohibitions imposed by governmental authority; (iv) this Lease; (v) matters contemplated by this Lease and any schedule thereto; (vi) the matters set forth in Schedule B, Section II of \_\_\_\_\_ Title Insurance Policy # \_\_\_\_\_ dated \_\_\_\_\_; (vii) any leasehold easements (whether or not joined by LESSOR); and (viii) any other matters requested by LESSEE and reasonably approved by LESSOR.

“**Permitted Transfer(s)**” shall have the meaning set forth in Section 22.1 of this Lease.

“**Permitted Uses**” shall mean the permitted uses which may be made of the Property pursuant to Section 21.1 of this Lease.

“**Person**” means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, other form of legal entity, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

“**Phased Building**” shall mean each of the building(s) and/or improvements generally shown on the Site Plan to be located upon the Property.

“**Premises**” shall have the meaning set forth in the Master Lease.

“**Prohibited Uses**” shall be the uses prohibited pursuant to Sections 21.2, 21.3 or 21.4 of this Lease.

“**Promenade**” shall have the meaning set forth in the Master Lease.

**“Promenade Completion”** shall mean the date of Substantial Completion of the Improvements comprising the Promenade within the Premises and accepted in writing by the City Manager.

**“Property”** shall mean the property as set forth on **Exhibits A and A-1**, as same may be modified as set forth in **Section 1.2** of this Lease, with all Improvements thereon.

**“Proposed Improvements”** shall mean the improvements (renovation or new construction) hereafter made on the Property from and after the Commencement Date (including the demolition of any existing Improvements to allow for any other improvements) and appurtenances reasonably related thereto or as contemplated in the Site Plan.

**“Regime”** shall mean a leasehold condominium under the Act of the State of Florida.

**“Regime Documents”** will mean the declaration creating the Regime, the Prospectus, and all other documents necessary or required by the Act to submit LESSEE’s leasehold estate to the Regime, discloses the existence this Lease to the Unit Owners, and to create the Regime. LESSEE shall prepare the Regime Documents and submit same to the City Manager for its limited review and approval in accordance with **Section 32.12**, which limited approval shall not be unreasonably withheld or delayed.

**“Related Person(s)”** shall have the meaning set forth in the definition of Community Trust Transfer Fee.

**“Removal Notice”** shall mean written notice given upon the expiration or termination of this Lease, which shall be deemed given upon the later to occur of: (i) being posted on the entry door of each leasable space on the Property; (ii) recorded in the real property public records of Broward County, Florida; and (iii) set forth in a Resolution of the City Commission which is adopted after complying with any then required specific advertising and notice requirements for the adoption of municipal resolutions, if any.

**“Removal Period”** shall mean the period of sixty (60) calendar days after Removal Notice is given, whereby all Unit Owners, LESSEE, Sublessees, Sub-Sublessees and all others possessing any portion of the Property or having personal property thereon may remove their personal property and fixtures from the Property.

**“Rent”** shall mean the Annual Rent and any Additional Rent.

**“Residential Annual Rent”** shall be the annual amount payable by each Branded Residential Unit Owner (other than the Original Branded Residential Unit Owner) to the Association (who shall act as collection agent for LESSOR) who shall remit same as collected to LESSOR on each Annual Payment Date in an amount equal to (i) One and 25/100 Dollars (\$1.25) multiplied by the Square Footage as actually constructed with respect to such Branded Residential Unit(s) each year until the First Adjustment Date whereupon on the First Adjustment Date and each Adjustment Date thereafter, the Residential Annual Rent then in effect immediately prior to

such Adjustment Date shall be increased by the CPI Adjustment. Residential Annual Rent is a separate and different obligation from the Sales Consideration Fee and the Transfer Fee.

“**Revised Legal Description**” shall have the meaning set forth in Section 1.2.

“**Sales Consideration Fee**” shall be: (i) the LESSOR Sales Fee payable to LESSOR and (ii) the Community Trust Sales Fee payable to the LESSEE to be promptly remitted to the Community Trust Entity, each in connection with the initial conveyance of title of each such Branded Residential Unit from the Original Branded Residential Unit Owner to an Initial Third Party Branded Residential Unit Owner which is contemplated to be paid out of the closing of each such Branded Residential Unit. LESSEE agrees that LESSOR has a lien right, whereby a lien may be filed on each Branded Residential Unit which does not pay such Sales Consideration Fee payable as to such Branded Residential Unit as provided in this Lease.

“**Shared Facilities**” shall have the meaning set forth in the Master Declaration.

“**Show Dates**” shall have the meaning set forth in the Boat Show Lease.

“**Show Site**” shall have the meaning set forth in the Boat Show Lease.

“**Site Plan**” shall mean the site plan reflected by the referenced plans and exhibits identified in the list attached hereto and made a part hereof as **Exhibit G** which has been approved by the City prior to the Commencement Date, as same may be modified from time to time as provided in this Lease.

“**Special Functions**” shall have the meaning as set forth in the Master Declaration.

“**Square Foot Price**” shall mean the Net Sales Proceeds divided by the Square Footage of such Branded Residential Unit.

“**Square Footage**” or “**Square Foot**” shall mean the aggregate square footage of each Branded Residential Unit (as applicable) measured from the interior face of the boundary walls excluding balconies (i.e., paint to paint) of each such Branded Residential Unit (as applicable).

“**Start Date**” shall mean a date after the Commencement Date which is the date of commencement of construction of the first to occur of the first residential building or the new hotel on the Bahia Mar Complex as contemplated by the Site Plan after the Governmental Approvals have been obtained for such improvements.

“**State**” shall mean the State of Florida.

“**Sublease**” shall have the meaning set forth in Section 22.2.

“**Subleased Premises**” or “**Sub-Subleased Premises**” shall mean the portion of the Property demised under a Sublease or Sub-Sublease, as applicable.

“**Subleasehold Mortgage**” shall have the meaning set forth in Article 16.2 of this Lease.

“**Subleasehold Mortgagee**” shall have the meaning set forth in Article 16.2 of this Lease.

“**Sublessee**” shall have the meaning set forth in Section 22.2.

“**Subsequent Sale**” shall mean the sale of a Conveyed Branded Residential Unit.

“**Subsequent Branded Residential Unit Owner(s)**” shall mean the Initial Third Party Branded Residential Unit Owner and each subsequent Residential Unit Owner to whom a Conveyed Branded Residential Unit is then being conveyed.

“**Substantial Completion**” shall mean completion of the work (as evidenced by a shell certificate of occupancy, certificate of completion or comparable certificate issued by the City in its governmental capacity under the Florida Building Code (and incorporated life safety codes), as amended, evidencing the work for which such certificate or permit has been issued as intended in the next sentence is completed). It is the intent that Substantial Completion of the Proposed Improvements shall be when completion of the Proposed Improvements is to a level to permit conveyances of Branded Units under the Act.

“**Sub-Subleasehold Mortgage**” shall have the meaning set forth in Article 16.3 of this Lease.

“**Sub-Subleasehold Mortgagee**” shall have the meaning set forth in Article 16.3 of this Lease.

“**Sub-Sublessee**” shall have the meaning set forth in Section 22.2.

“**Sub-Tenant Allowances**” shall have the meaning set forth in the definition of Gross Revenue.

“**Term**” or words of similar import shall mean the term set forth in Article 4 hereof, including the Initial Term as extended by any Extended Term, as applicable.

“**Third Appraiser**” shall have the meaning set forth in the definition of Fair Market Value Rent.

“**Third Party Contractor**” shall have the meaning set forth in Section 11.15.

“**Third Party Sublessor**” shall have the meaning set forth in Section 22.3.

“**Third Party Sub-Sublessor**” shall have the meaning set forth in Section 22.4.

“**Transfer Fee(s)**” shall be (i) the LESSOR Transfer Fee payable to the City and (ii) the Community Trust Transfer Fee payable to the Community Trust Entity, each to be paid at the closing of each Subsequent Sale.

“**Unit**” shall mean each Branded Residential Unit and/or Commercial Unit which is the subject of the Regime pursuant to the Regime Documents.

“**Unit Owner**” shall mean the owner of a Unit.

#### **ARTICLE 4** **TERM**

Section 4.1 **Term**. This Lease shall begin at 12:01 a.m. local time on the Commencement Date, and continue for a period of fifty (50) years thereafter (“**Initial Term**”), as same may be extended pursuant **Section 4.2**, unless sooner terminated, whereupon said Property shall be returned to LESSOR free of any encumbrances or obligations created by LESSEE.

Section 4.2 **Extended Term**. Provided no Event of Default exists at such time and LESSEE has obtained a shell certificate of occupancy for the Phased Building, LESSEE shall have the right upon written notice to LESSOR to extend the Term of this Lease for an additional period of fifty (50) years after the expiration of the Initial Term] (“**Extended Term**”).

Section 4.3 **Termination/Expiration**. In all events, at termination or expiration of this Lease, except as may be otherwise provided in any Non-Disturbance Agreement(s) previously executed by LESSOR, the Property with all Improvements thereon (except that personal property and trade fixtures of LESSEE, Sublessees, Sub-Sublessees and others shall remain the property of such parties and may be removed by such parties prior to the end of the Removal Period) shall be deemed returned to LESSOR and owned by LESSOR free of any encumbrances or obligations created by or through LESSEE (except those obligations of LESSEE that expressly survive termination of this Lease as provided in this Lease). Attached personal property and trade fixtures which remain on the Property after the Removal Period expires shall be deemed abandoned by the owners thereof and owned by LESSOR, except as may be otherwise provided in any Non-Disturbance Agreement(s) previously executed by LESSOR. Except as otherwise expressly provided for herein, all of the covenants, terms, conditions, and provisions set forth herein shall apply to, bind, and benefit LESSOR and LESSEE during the stated Term hereof commencing on the Commencement Date and ending at the expiration of the Term (as same may be extended).

#### **ARTICLE 5** **POSSESSION AND LETTING**

Section 5.1 **Possession**. Possession of the Property by LESSEE shall continue from and after the Commencement Date. LESSEE may (i) make improvements and rehabilitate the Property; (ii) carry on and conduct its business and operate the Property; (ii) develop and redevelop the Property in accordance with the terms of this Lease; and (iv) use the Property as provided in this Lease. LESSEE shall continue to own the Improvements and other personal property located upon the Property, subject to the terms of this Lease.

Section 5.2 **Quiet Enjoyment**. LESSEE, upon paying the Rent and performing and observing all of the other terms, covenants and conditions of this Lease on LESSEE’s part to be performed and observed, shall peacefully and quietly have, hold and enjoy the Property unabated during the Term without any interference, let, hindrance, or molestation from LESSOR, or any persons claiming possession by, through, or under LESSOR, subject to the terms of this Lease and the Permitted Exceptions.

**ARTICLE 6**  
**COMPLIANCE WITH REGULATIONS OF PUBLIC BODIES/RESPONSIBILITY FOR IMPROVEMENTS**

Section 6.1 Compliance. LESSEE covenants and agrees that in connection with its operation of the Property, to perform such acts and do such things as shall be lawfully and generally required by any public body having jurisdiction over said Property, in order to comply with: (i) sanitary requirements, (ii) stormwater management and floodplain requirements; and (iii) land use and zoning, use, and site plan regulatory requirements (including physical site development criteria such as height, setback, land coverage, building mass, permeable area density, and parking requirements), as they exist from time to time, subject however, to any administrative relief or approvals to the foregoing as is obtained by LESSEE in the form of authorized special exceptions, variances, zoning, Site Plan waivers, conditional use approvals, or other authorized variations as same may exist from time to time.

Section 6.2 Permitted Action. It is the intent of LESSOR and LESSEE that LESSEE shall be permitted to develop, construct, operate on the Property as contemplated by this Lease.

Section 6.3 Improvements. During the Term, LESSEE (or its assigns) shall comply with the applicable provisions of the Florida Building Code (and incorporated Codes) in connection with Improvements constructed on the Property by LESSEE (or its assigns). The fact that LESSOR is a municipal corporation, and will conduct plan review and inspections as LESSOR as set forth in this Lease (in its proprietary capacity), LESSOR may be required to approve such matters in its governmental capacity for general compliance with the Florida Building Code (and incorporated Codes), as amended. The acts of the City in its governmental capacity (as opposed to its capacity as LESSOR) shall not act as an estoppel to, or a waiver of LESSOR's governmental sovereign immunity, or right to require construction or reconstruction in accordance with the Florida Building Code (and incorporated Codes), as amended (subject to LESSEE's right to challenge such enforcement to the extent legally permitted).

**ARTICLE 7**  
**HAZARDOUS SUBSTANCES**

Section 7.1 LESSOR'S Consent Required. During the Term, LESSEE covenants and agrees that in the use of the Property, no Hazardous Substances in excess of limits permissible by or in violation of applicable Hazardous Substances Laws shall be brought upon, kept or used in or about the Property by any Person whomsoever, unless such Person first obtains the written consent of LESSOR. LESSOR does hereby consent to the use of those Hazardous Substances reasonably and normally used for the purposes of the operation of the Permitted Use, including, but not limited to, hotel, retail, office, and residential.

Section 7.2 Notices. Other than as has been previously disclosed in writing to LESSOR as shown on Exhibit H, if at any time LESSEE shall become aware, or have reasonable cause to believe, that any Hazardous Substance in violation of any applicable Hazardous Substances Laws has come to be located on or beneath the Property after the Commencement Date, LESSEE shall immediately, upon discovering such presence or suspected presence of the

Hazardous Substance, give written notice of that condition to LESSOR. In addition, LESSEE shall promptly notify LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substances Laws; (ii) any written claim made or threatened by any Person against LESSEE, the Property or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances; and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the Property or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith. LESSEE shall also supply to LESSOR as promptly as possible, and in any event, within five (5) business days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations of any applicable Hazardous Substances Laws relating in any way to the Property or improvements located thereon or LESSEE's use thereof.

Section 7.3 Reports and Test Results Supplied to LESSOR. LESSEE agrees to provide to LESSOR a copy of all environmental and Hazardous Substance reports (including test results dealing with the Property) obtained by LESSEE after the Commencement Date hereof, or which otherwise come into LESSEE's possession, custody, or control (regardless of when conducted), within fifteen (15) days following LESSEE's receipt of same to the extent such reports contain information not previously disclosed to LESSOR.

Section 7.4 Remedial Action. The obligation of LESSEE as stated above shall include the reasonable costs of the following when required by Hazardous Substances Laws by Environmental Agencies:

- (i) all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like;
- (ii) all cleaning, detoxification, remediation, cleanup and disposal;
- (iii) all tests, audit, monitoring, and reporting; and
- (iv) all fees, costs, assessments, fines and penalties legally charged by Environmental Agencies in accordance with Hazardous Substances Laws.

Section 7.5 Hazardous Substances Indemnification of LESSOR.

(a) LESSEE shall indemnify, defend and hold LESSOR harmless of and from all claims, demands, fines, penalties, causes of action, administrative proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and experts' fees), which are asserted against LESSOR for bodily injury, disease, sickness, death, property damage (including the loss of use therefrom), damage or injury to the environment or natural resources, or some or all of the foregoing, and which relate, refer, or pertain to:

- (i) the existence of Hazardous Substances on, under, or over the Property,

(ii) Hazardous Substances being released into the air, water, groundwater, or onto the ground in connection with operations on the Property,

(iii) gaseous emissions (excluding methane, radon, and other naturally occurring gases) from the Property,

(iv) the use, generation, or storage of Hazardous Substances on the Property,

(v) the disposal of Hazardous Substances, or

(vi) some or all of the foregoing.

The foregoing indemnity shall not apply to the extent LESSOR's negligent, grossly negligent, or intentional acts or omissions are the cause of any matter described in (i)-(vi) above.

(b) The indemnity in Section 7.5(a) shall include without limitation the reasonable costs of the following when required by Hazardous Substances Laws or by applicable governmental entities and agencies who are designated to enforce Hazardous Substances Laws (herein "**Environmental Agencies**"):

(i) all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like;

(ii) all cleaning, detoxification, remediation, cleanup and disposal;

(iii) all tests, audit, monitoring, and reporting; and

(iv) all fees, costs, assessments, fines and penalties charged by Environmental Agencies.

(c) LESSEE agrees to pay for all reasonable attorneys' fees, experts' fees and costs incurred by LESSOR in LESSOR's enforcement against LESSEE of the provision of this Section 7.5;

(d) The indemnification provided in this Section 7.5 and all indemnity obligations of the LESSEE in the Master Lease with respect to Hazardous Substances located on the Property shall survive the termination or expiration of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action;

(e) The term "property damage" as used in this Section 7.5 includes, but is not limited to, damage to the property of LESSEE, LESSOR, and of any third parties (including the loss of use thereof), and damage which is caused by any Environmental Agencies, or which is caused by LESSOR or LESSEE acting pursuant to directives from an Environmental Agency or pursuant to a court order, or which is caused by all of the foregoing.

(f) In any matter asserted against LESSOR by third parties which falls within the scope of this indemnity, neither the provisions of this Lease, nor LESSEE's indemnification of LESSOR are intended to waive or affect, and shall not be construed to waive or affect, LESSOR's sovereign immunity (if applicable), and at all times LESSOR shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending LESSOR against claims of third parties pursuant to the Indemnity provided in this Section 7.5, LESSEE may assert LESSOR's sovereign immunity to the greatest extent as may be provided by law.

(g) In the event LESSOR's insurance coverage requires that LESSOR's carrier defend any claim that falls within the scope of this indemnity, LESSEE shall not be responsible to reimburse LESSOR for its costs of defense, to the extent such defense is provided or costs are reimbursed to LESSOR pursuant to LESSOR's insurance policy.

Section 7.6 LESSOR'S Right of Entry for Testing. At any time during the term of this Lease, LESSOR may, upon reasonable prior written notice to LESSEE (taking reasonable action to minimize potential disruption of the operation of the hotel, retail, office, residential, and other Permitted Uses, and to minimize damage to the Property particularly during the tourist season), enter upon the Property (other than inside of Branded Units) for the purpose of conducting environmental tests, pursuant to Section 7.8 (and thus not as a result of the exercise of its regulatory governmental jurisdiction) ("LESSOR'S Tests"), to determine the presence and extent of contamination by Hazardous Substances on or under the Property, provided that in connection with entering into the occupied portions of the Property, LESSOR shall provide reasonable advance notice to LESSEE and coordinate such access with LESSEE, in order to not unreasonably interfere with LESSEE and the business or other activity conducted on the Property. LESSOR shall not be entitled to conduct LESSOR'S Tests unless: (1) a governmental entity (other than LESSOR) shall have issued a written notice of violation to LESSEE or LESSOR with respect to Hazardous Substances on, within, or under the Property; or (2) LESSOR has reasonable cause to believe that Hazardous Substances exist on or under the Property in violation of Hazardous Substances Laws. Notwithstanding the limitations set forth in number (1) and number (2) above, LESSOR may conduct LESSOR'S tests no more often than twice every five (5) years without being subject to the limitations set forth as (1) and (2) above.

LESSOR'S Tests shall be at the sole cost of LESSOR. The cost and expenses relating to LESSOR'S Tests shall not be included in remediation provisions of Section 7.4 or in the scope of any indemnification provided in favor of LESSOR in this Lease, unless such testing resulted from the presence of Hazardous Substances caused by LESSEE's use of the Property. No LESSOR Tests shall be conducted until LESSOR has provided to LESSEE the name of the testing contractor (which shall be fully licensed to conduct LESSOR'S Tests) and a certificate of insurance with limits reasonably acceptable to LESSEE confirming that LESSEE is an additional insured and that coverage exists for property damage, personal injury and business interruption which may result from LESSOR'S Tests. LESSOR agrees to indemnify and hold LESSEE harmless (subject to its limitation of sovereign immunity liability) with respect to any loss, claim or damage (including attorney's fees and expenses) which LESSEE shall suffer as the result of the conduct of LESSOR'S Tests.

Section 7.7 Petroleum Liability and Restoration Insurance Program. During the term of this Lease, LESSEE shall, so long as coverage is commercially available and the State of Florida maintains the Petroleum Liability and Restoration Insurance Program and the Inland Protection Trust Fund (or replacement programs), maintain in effect the Petroleum Liability and Restoration Insurance Program Coverage for Third Party Liability for Contamination in the amount of Ten Million Dollars (\$10,000,000) which \$10,000,000 shall remain until June 27, 2024 as described on Exhibit I attached hereto (and thereafter with coverages substantially similar thereto), and to the extent that same is available on a commercially reasonable basis, the amount of such coverage shall be increased every five (5) years thereafter as provided in Section 20.2 of this Lease.

## **ARTICLE 8**

### **INDEMNITY AGAINST COSTS AND CHARGES**

LESSEE and LESSOR agree that in connection with any disputes between the Parties pertaining to this Lease, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable costs, expenses and attorneys' fees and shall be entitled to all remedies available at law or in equity for such breach (subject to the terms and limitations as to such enforcement set forth in this Lease) which may be incurred or sustained by such Party by reason of the defaulting Party's breach of any of the provisions of this Lease. Any sums due LESSOR by LESSEE under the provisions of this Article shall constitute Additional Rent owed by LESSEE to LESSOR.

## **ARTICLE 9**

### **INDEMNIFICATION AGAINST CLAIMS**

(a) LESSEE shall indemnify, defend, and hold harmless LESSOR from and against all claims from compensatory damages (including those for bodily injury, disease, sickness, death, property damage), demands, fines, penalties, causes of action, administrative proceedings, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and experts' fees), which are asserted against LESSOR by third parties which relate, refer, or pertain to:

(i) the rights, responsibilities and obligations of LESSEE under this Lease, the breach or default by LESSEE of any covenant or provision of this Lease, or LESSEE's possession, use, or occupancy of the Property or the Improvements, or some or all of the foregoing;

(ii) any Regime development on the Property, to the extent a Regime is created by LESSEE upon any portion of the Property, that such Regime does not comply with the Act, or that no Regime was created in connection with the intended Regime, or that this Lease does not comply with §718.122, §718.401 or §718.404 of the Act, or that any documents used by LESSEE in the sale or marketing or description of the Regime condominium were inaccurate, misleading, incomplete, or failed to satisfy all legal requirements, or that involve owners or occupants of the Regime Units, or that the Regime is not a leasehold Regime;

(iii) an adverse interest being asserted against any LESSOR's fee simple interest in the Property arising after the Commencement Date, which is not based upon any Permitted Exceptions, any matters created by or through LESSOR, interests expressly approved in writing by LESSOR, or based on this Lease or a Non-Disturbance Agreement executed in connection with this Lease or subleases in connection therewith;

(iv) construction liens; other liens, levy or execution by judgment creditors; liens and assessments imposed by governmental authorities (excluding LESSOR); prescriptive rights and adverse possession, or other loss of title to or encumbrance of LESSOR's interest in the Property arising due to LESSEE's acts or failure to act after the Commencement Date (other than when caused by the acts of or with the consent of LESSOR or through condemnation). LESSEE acknowledges and agrees that LESSOR shall not be deemed to have waived any of its rights not to be subject to adverse possession, prescriptive rights or other loss of title as may be afforded LESSOR pursuant to applicable law, whereby LESSOR's real estate interests pass to third parties (if any);

(v) negligent, reckless, or willful or intentional acts or omissions of LESSEE's or its Sublessees, or anyone directly or indirectly employed by any of them and anyone for whose acts any of them may be liable during the performance of construction work or services related to the Improvements;

(vi) negligent, reckless, or willful or intentional acts or omissions of LESSEE, its Sublessees, and Sub-Sublessees, or of any other Person enjoying a right of possession or use of any portion of the Property by through or under any of them (except when such Person enjoying such derivative right of possession or use is LESSOR or its agent, through access or use of the Property); or

(vii) some or all of the foregoing.

The foregoing indemnity shall not apply to the extent of LESSOR's (or its agents, employees, contractors or others acting on behalf of LESSOR) negligent, grossly negligent, or intentional acts or omissions which make LESSOR liable for any of the matters described in (i)-(vii) above or for events conducted by or in connection with access or use of the Property by LESSOR.

(b) LESSEE and LESSOR agree that the prevailing Party shall be entitled to recover from the non-prevailing Party, reasonable attorneys' fees, experts' fees and costs incurred by the prevailing Party in connection with a dispute with respect to the provision of this Article 9.

(c) The indemnification provided in this Article 9 shall survive the termination or expiration of this Lease.

(d) In any matter asserted against LESSOR by third parties which falls within the scope of this indemnity, neither the provisions of this Lease, nor LESSEE's indemnification

of LESSOR are intended to waive or affect, and shall not be construed to waive or affect, LESSOR's sovereign immunity, and at all times LESSOR shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending LESSOR against claims of third parties pursuant to the Indemnity provided in this Article 9, LESSEE may assert LESSOR's sovereign immunity to the greatest extent as may be provided by law.

(e) In the event LESSOR's insurance coverage requires that LESSOR's carrier defend any claim that falls within the scope of this indemnity, LESSEE or its Third Party Contractor (as applicable) shall not be responsible to reimburse LESSOR for its costs of defense, to the extent such defense is provided pursuant to LESSOR's insurance policy.

## **ARTICLE 10** **INSPECTION**

LESSOR or its Authorized Representative shall have the right to enter the Property and the buildings and improvements constructed thereon (other than occupied hotel rooms or Branded Units), at all reasonable hours and reasonable frequency for the purpose of inspecting the same, or for any other appropriate purposes not inconsistent with the terms or spirit of this Lease, provided such inspection shall be performed in a manner to minimize disruption to any business being conducted upon the Property, LESSOR will restore any damage caused to the Property in connection with its inspections and LESSOR shall provide LESSEE reasonable advance notice in order to coordinate such access with operations conducted or to be conducted upon the Property.

## **ARTICLE 11** **CONSTRUCTION BY LESSEE**

Section 11.1 Construction. It is intended that the Property will be developed with the Proposed Improvements as contemplated by the Site Plan and the Property submitted to the Regime and the Branded Units sold to third parties, whereby such interests may be encumbered by Leasehold Mortgage(s) and/or Subleasehold Mortgage(s) held by different lenders all as provided in this Lease. In connection with said contemplated development, the parties agree that:

11.1.1 All Proposed Improvements shall be developed substantially consistent with the Site Plan, Approved Plans, and all other relevant laws, rules and regulations affecting the Property;

11.1.2 LESSOR hereby approves the Site Plan and LESSEE will only amend the Site Plan as to the Property with the approval of the City Manager, subject to LESSEE also obtaining any required City Governmental Approval.

11.1.3 LESSEE may renovate, develop and construct Proposed Improvements and conduct activities on the Property during the Term of this Lease in conformance with this Lease. This Article 11 sets forth the provisions which apply when the City of Fort Lauderdale exercises the rights provided to it under this Lease as a landlord with respect to the Site Plan, which approval of LESSOR shall not excuse LESSEE from obtaining any City Governmental Approval required under applicable law with respect to such development.

11.1.4 Nothing herein shall be construed as a waiver of LESSOR's regulatory and/or police power to grant or deny development approvals or consent to Proposed Improvements under LESSOR's regulatory and/or police power when the City is reviewing same as a governmental agency versus as a LESSOR.

11.1.5 LESSOR will join in the Master Declaration and such easements, restrictive covenants, easement vacations or modifications, subdivision requirements and such other documents as may be necessary for LESSEE to develop the Property in a manner otherwise permitted hereunder, provided that the terms of such document shall be reasonably approved by the City Manager.

11.1.6 The LESSEE shall within one (1) year after the Commencement Date (subject to extension of time due to delays in obtaining applicable governmental approvals, obtaining financing, (using good faith and reasonably diligent efforts to do so), obtaining presales of 65% or more of the Units (to be created by the Regime Documents) in the Phased Parcel and acts of Force Majeure) apply for governmental approvals to construct the Phased Building and upon obtaining a building permit for the Phased Building, proceed diligently to complete such Phased Building.

Section 11.2 Approved Plans and Permitted Changes. During the development of the Proposed Improvements on the Property by LESSEE, LESSEE shall submit to LESSOR for review and approval, Permitted Changes and construction plans and specifications with respect to such Proposed Improvements (other than interior improvements) for City Manager's reasonable review and approval (which approval shall not be unreasonably withheld, conditioned, delayed, or denied if such Permitted Changes or construction plans and specifications are substantially consistent with the Site Plan). The review and approval of the Permitted Changes and construction plans and specifications shall be performed by the City Manager and LESSOR agrees the City Manager shall review and either approve or disapprove and specify with reasonable specificity the basis for such disapproval within thirty (30) days after request for such approval.

The approval by the City Manager on behalf of LESSOR in its proprietary capacity of any plans, specifications, or designs shall not constitute a representation or warranty by LESSOR as to such conformity with proper design or applicable law, and the responsibility therefor shall at all times remain in LESSEE.

The approval of LESSOR in its capacity as landlord is not required for improvements to the Branded Units, provided such improvements shall be subject to all applicable permitting requirements.

Section 11.3 Deemed Approval. In the event that, with respect to approvals to be given by the City Manager on behalf of LESSOR with respect to approval of the Permitted Changes or construction plans and specifications, the City Manager shall fail to approve or disapprove (and specify the basis for such disapproval) any Permitted Changes or plans or specifications submitted to LESSOR which require its approval within thirty (30) days of being submitted to LESSOR, LESSEE requesting such approval shall deliver written notice to LESSOR advising LESSOR that LESSOR has not responded to LESSEE within the required 30-day period and LESSOR shall have

an additional ten (10) days thereafter to respond to LESSEE with such approval or disapproval. In the event that LESSOR fails to respond after the expiration of the additional 10-day period, then LESSOR shall be deemed to have approved such request, provided the correspondence of such submittal to the City Manager advises the City Manager that a failure to respond within such thirty (30) period shall be a deemed approval thereof under this Lease.

Section 11.4 Standards of Construction. As between LESSOR and LESSEE, LESSEE shall ensure that any and all construction of the Proposed Improvements shall be performed in such a manner as to provide that the Proposed Improvements on the Property shall:

- (a) Be properly designed, structurally sound, safe for human occupancy (to the extent applicable), and free from any unusual hazards;
- (b) Comply in all material respects with the Approved Plans and the Governmental Approvals; and
- (c) Comply in all material respects with the terms and provisions of this Lease.
- (d) Construct the improvements in a good and workmanlike manner.
- (e) Construct the improvements in compliance with American with Disabilities Act (ADA) requirements.

Section 11.5 Comply with Applicable Law. All Proposed Improvements constructed or installed by the LESSEE, its agents, or contractors, shall conform to all applicable state, federal, county, and local statutes, ordinances, building codes, fire codes, and rules and regulations, as amended.

Section 11.6 Evidence of Funding. Prior to commencing construction of any of the Improvements shown on the Site Plan having a cost in excess of Ten Million Dollars (\$10,000,000), the LESSEE shall provide LESSOR with reasonable evidence of the ability to construct and pay for such improvements then being constructed which shall be subject to the City Manager's reasonable review and approval and which shall include providing a copy of any financing commitment and a certification that the balance will be funded from equity, deposits provided by third parties or other sources of funding such improvements, a copy of the proposed construction contract with the scope of work (including any payment and performance bonds (if applicable) to assure the performance of any construction contract which meets the requirements of Article 29), and other information regarding the foregoing as may be reasonably requested by LESSOR.

Section 11.7 Encumbrances. LESSEE hereby represents, warrants and covenants to LESSOR that the fee simple title to LESSOR's interest in the Property shall be at all times free and clear of all liens, claims and encumbrances created by or through LESSEE (other than those created or consented to by LESSOR); provided, however, that LESSEE shall be entitled to encumber the leasehold estate, subleasehold estates, sub-subleasehold estates and/or LESSEE's interest in the Improvements and Branded Units subject to the provisions of this Lease.

If any lien or notice of lien shall be filed against the fee simple title of LESSOR to the Property created by or through the LESSEE (other than those created or consented to by LESSOR), the LESSEE shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. Neither LESSEE, any Sublessee or any Sub-Sublessee shall be deemed to be LESSOR's agent so as to confer upon any contractor or subcontractor providing labor or services or material to the Property (whether in connection with LESSEE's Improvements or otherwise) a construction and/or mechanic's lien against LESSOR's estate under the provisions of Chapters 255 or 713 Florida Statutes as amended from time to time. The foregoing shall be contained in a notice or memorandum to be recorded in the Public Records of Broward County in accordance with Florida Statutes Chapter 713.

Section 11.8 As Built. Within one hundred twenty (120) days after the date a Certificate of Occupancy is issued for any Proposed Improvements requiring such document, the LESSEE shall, at its expense, provide LESSOR with a complete set of "as built" plans and specifications, including mylar reproducible "record" drawings, and, if available, one set of machine readable disks containing electronic data in an AUTOCAD format that meets LESSOR's graphic standards of the "as-constructed" or "record" plans for such Improvements.

Section 11.9 Required Governmental Approval. The LESSEE shall obtain all required Governmental Approvals having jurisdiction over any Proposed Improvements.

Section 11.10 Redevelopment. The LESSEE (or its designees) may, at no expense to LESSOR, and at any time, construct, demolish and/or reconstruct additional buildings or structures on any portion of the Property and make such alterations, additions or changes, structural or otherwise, in and to the Improvements as LESSEE may deem necessary or suitable to property it owns provided that such Improvements are consistent with the Site Plan and the Approved Plans for such component of the work or as approved by the City Manager.

Section 11.11 Governmental Approvals Joinder. LESSOR acknowledges that LESSEE intends to develop the Property or have the Property developed and that in connection therewith, it will be necessary for the LESSEE to apply to the City of Fort Lauderdale (in its governmental capacity) and other governmental and quasi-governmental authorities in an effort to obtain all final Governmental Approvals in connection with the development of such Improvements. LESSOR agrees to reasonably cooperate with LESSEE in seeking the Governmental Approvals from other governmental and quasi-governmental authorities for the Improvements. LESSOR shall reasonably cooperate in the execution of applications (to the extent required by any governmental or quasi-governmental authorities) and other documentation in connection with such Governmental Approvals; provided, LESSOR shall not be required thereto to expend any sums in connection with such assistance (other than its review and administrative costs) and provided such applications are substantially consistent with the Approved Plans and the Site Plan or as approved by the City Manager.

Section 11.12 Omitted Intentionally.

Section 11.13 Insurance Requirements for Construction Contracts. Only in connection with the construction of new buildings or significant alterations, demolitions, and/or renovations, in each case in having a cost in excess of Ten Million Dollars (\$10,000,000), the provisions of this Section 11.13 shall be applicable, to wit:

LESSEE agrees to include the following insurance requirements in any agreement it enters into with any contractor(s) performing construction work on the Premises and to require in its Subleases entered into after the date hereof (excluding boat leases at the Marina), the following insurance and LESSEE further agrees to provide to LESSOR, prior to commencement of the improvements with respect to such contract, certificates of insurance evidencing the contractor's compliance with the requirements of this Section.

Providing proof of and maintaining adequate insurance coverage are material obligations of the LESSEE. The contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, or a lower rating subject to the reasonable approval of the LESSOR.

The coverages, limits, and/or endorsements required herein protect the interests of the CITY, and these coverages, limits, and/or endorsements shall in no way be relied upon by the contractor for assessing the extent or determining appropriate types and limits of coverage to protect the contractor against any loss exposures. The requirements contained herein are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the contractor.

The following insurance policies and coverages are required:

Professional Liability

Coverage must be afforded for wrongful acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate. Contactor must keep the professional liability insurance in force until the third anniversary of the acceptance of work.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the contractor. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

Business Automobile Liability. Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

Crane and Rigging Liability. Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy as necessary, in line with the limits of the associated policy.

If the contractor does not own vehicles, the contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Pollution and Remediation Legal Liability (Hazardous Materials). For the purpose of this section, the term “hazardous materials” includes all materials and substances that are designated or defined as hazardous by Florida or federal law or by the rules or regulations of Florida or any federal agency. If work being performed involves hazardous materials (other than as permitted under applicable law) the contractor shall procure and maintain the following coverage:

Contractors Pollution Liability Coverage. For sudden and gradual occurrences and in an amount not less than \$5,000,000 per claim including but not limited to, all hazardous materials.

Property Coverage (Builder’s Risk). Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 (other than Flood which coverage and deductible shall be per standard Federal Flood Insurance policy limits and Windstorm which deductible may be as high as 5% of the project cost coverage; each (including the \$25,000 deductible minimum) subject to availability at commercially reasonable premium rates and subject to Lessor’s reasonable approval) each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause
- Guaranteed policy extension provision

- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage. This insurance shall remain in effect until the work is completed.

Workers' Compensation and Employer's Liability. Coverage must be afforded per Chapter 440, Florida Statutes and be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements.

(a) The LESSEE shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work.

(b) The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

(c) The CITY shall be named as an Additional Insured on all liability policies, with the exception of Professional Liability, Business Auto Liability, and Workers' Compensation.

(d) The CITY shall be granted a Waiver of Subrogation on the contractor's Workers' Compensation insurance policy.

(e) The title of the project or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale  
 100 N. Andrews Avenue  
 Fort Lauderdale, FL 33301

If the contractor's primary insurance policy/policies do not meet the minimum requirements, the contractor may provide evidence of an Umbrella/Excess insurance policy to comply with these requirements.

The contractor's insurance coverage shall be primary insurance as respects to the CITY, a Florida municipal corporation, its officials, employees, and volunteers.

Any insurance or self-insurance maintained by the CITY, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

It is the LESSEE's responsibility to ensure that any and all of the LESSEE's contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the LESSEE.

Section 11.14 Omitted Intentionally.

Section 11.15 Contractor Indemnity. The LESSEE shall use commercially reasonable efforts (without being required to incur any significant increase in cost) to obtain in any contract for labor, services or materials to be provided in connection with the construction of Improvements in excess of \$10,000,000 between LESSEE or its Affiliate and a general contractor constructing such Improvements (each a "**Third Party Contractor**") a provision for an indemnification clause whereby the Third Party Contractor shall indemnify, defend, and hold harmless LESSEE and LESSOR for any and all claims, suits, causes of action, and proceedings, for all loss, costs, damages, or expenses, including, but not limited to, attorneys' fees and court costs through all trial and appellate levels and post judgment proceedings, with respect to claims for personal injury and/or property damage asserted against LESSOR, LESSEE, or both LESSOR and LESSEE, which are alleged to have been caused by the Third Party Contractor, its subcontractors, subconsultants, agents and employees in connection with performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract and arising out of such Third Party Contractor's negligence and/or wrongful acts and omissions. Subject to the provisions of Section 9(e), the Third Party Contractor shall retain legal counsel to defend LESSOR with competent legal counsel reasonably acceptable to LESSOR.

The provisions of this section shall not apply to the contractors performing construction services within a Unit for the owner or its designees thereof.

**ARTICLE 12**  
**NO LIENS CREATED BY LESSEE**

LESSEE covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of LESSOR in and to the Property covered by this Lease, and that no Person shall ever be entitled to any lien, directly or indirectly derived through or under LESSEE, or his agents or servants, or on account of any act or omission of said LESSEE, which lien shall be superior to the lien of this Lease reserved to LESSOR upon the Property. All Persons contracting with LESSEE, or furnishing materials or labor to LESSEE, or to his agents or servants, as well as all Persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LESSEE shall not be deemed to be the agent of LESSOR, so as to confer upon a laborer bestowing labor upon the Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Property, a mechanic's lien pursuant to Chapters 713 or 255, Florida Statutes, or an equitable lien upon LESSOR'S estate. This provision shall be deemed a notice

under Section 713.10(1), Florida Statutes, as amended, of the “non-liability” of LESSOR, and shall be included in a Memorandum filed in the real property records in Broward County, Florida.

**ARTICLE 13**  
**OPERATING EXPENSES**

Section 13.1 Until the Regime Documents are recorded and the Regime is created, LESSEE agrees to promptly pay when due all operating, maintenance and servicing charges and costs, including telephone, gas, electricity, water, sewer, sewer connections, and all other expenses incurred in the use and operation of the Property; provided, however, after the Regime Documents are recorded and the Regime is created, the Association, when it becomes the LESSEE, shall pay all operation, maintenance and service charges and costs with respect to the Common Areas of the Regime.

Section 13.2 Until recording of the Regime Documents, LESSEE agrees to obtain at its expense all permits and licenses which may be required by any governmental authority for LESSEE to maintain and operate the Property but not for portions of the Property subleased to Non-Affiliated Persons. After the creating the Regime, the Association shall maintain all required licenses and permits to operate the Common Areas.

**ARTICLE 14**  
**NONWAIVER**

Failure of LESSOR to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions or agreements unless accepted by LESSOR in writing. LESSEE covenants that no surrender or abandonment of the Property or of the remainder of the term herein shall be valid unless accepted by LESSOR in writing.

**ARTICLE 15**  
**BANKRUPTCY OF LESSEE**

Should LESSEE, at any time during the term of this Lease, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against itself, or institute an arrangement proceeding under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or any amendments thereto, or should LESSEE’S leasehold interest be levied on and the bankruptcy or lien thereof not discharged within one hundred twenty (120) days after written notice from LESSOR to LESSEE of said levy having been made, then, in such event, and upon the happening of said events, LESSOR shall have the right, at its election, to consider the same a material default on the part of LESSEE of the terms and provisions hereof. The pendency of bankruptcy proceedings, or arrangement proceedings, to which LESSEE shall be a party not cured within the applicable Cure Period shall not preclude LESSOR from exercising the option herein conferred. Upon filing a voluntary or involuntary petition in bankruptcy, LESSEE consents to the entry of an agreed order (or immediate relief from the automatic stay), which provisions shall be self-operative.

**ARTICLE 16**  
**LEASEHOLD MORTGAGEE**

Section 16.1 Leasehold Mortgage. LESSEE shall have the right to mortgage, assign, pledge or hypothecate its interest in this Lease to a Leasehold Mortgagee as security for an obligation (“**Leasehold Mortgage**”), provided in connection with obtaining such Leasehold Mortgage (i) the LESSEE shall forward to LESSOR a copy of such Leasehold Mortgage, together with a written notice setting forth the name and address of the holder of such Leasehold Mortgage (“**Leasehold Mortgage**”); and, (ii) in connection therewith, LESSOR agrees that it will, within thirty (30) days of request by the LESSEE to LESSOR, enter into a Non-Disturbance Agreement substantially in the form attached to this Lease and if not in such form, then in a form reasonably acceptable to Lessor and such Leasehold Mortgagee provided the LESSEE is not in default under this Lease as determined by LESSOR in its commercially reasonable discretion at the time of the LESSEE’s request to enter into such Non-Disturbance Agreement and if not in the form of **Exhibit E-1**, then in a form reasonably acceptable to LESSOR and such Leasehold Mortgagee. Attached as **Exhibit E-1** is a form of Non-Disturbance Agreement which LESSOR has reasonably approved for Leasehold Mortgagees. A Leasehold Mortgage can only exist between the LESSEE and a Leasehold Mortgagee, and such term as used in this Lease shall exclude leasehold mortgages executed by Sublessees or Sub-Sublessees. With respect to Leasehold Mortgages, the LESSEE agrees that LESSEE shall not cross-collateralize the Property with other property not related to: this Lease, the LESSEE’s leasehold or subleasehold interests in the Property, LESSEE’s interest in the Property, or the LESSEE’s tangible and/or intangible property relating to the Property.

Section 16.2 Subleasehold Mortgage. Any Sublessee shall have the right to mortgage, assign, pledge or hypothecate its interest in any Sublease as security for an obligation (“**Subleasehold Mortgage**”); provided however, only for Sublessees with whom LESSOR has executed or is executing a Non-Disturbance Agreement with respect to the Sublease as contemplated in Sections 22.2 and 22.3 of this Lease: (i) the Sublessee shall forward to LESSOR a copy of such Subleasehold Mortgage, together with a written notice setting forth the name and address of the holder of such Subleasehold Mortgage (“**Subleasehold Mortgage**”); and (ii) in connection therewith, LESSOR agrees that it will, within thirty (30) days of request by such Sublessee to LESSOR, and upon LESSOR’s reasonable approval of the form of Non-Disturbance Agreement, enter into a Non-Disturbance Agreement with such Subleasehold Mortgagee. Attached as **Exhibit E-2** is a form of Non-Disturbance Agreement which LESSOR has approved for Subleasehold Mortgagees and if not in such form, then in a form reasonably acceptable to LESSOR and such Subleasehold Mortgagee. With respect to a Sublease for which a Non-Disturbance Agreement for a Subleasehold Mortgage is being given, such Sublease and Non-Disturbance Agreement with the Subleasehold Mortgagee shall require that the Sublessee not cross-collateralize the Subleased Premises with other property not related to the Sublease, Sublessee’s interest in the Subleased Premises, or Sublessee’s tangible and/or intangible property relating to the Subleased Premises.

Section 16.3 Sub-Subleasehold Mortgage. Any Sub-Sublessee shall have the right to mortgage, assign, pledge or hypothecate its interest in any Sub-Sublease as security for an obligation (“**Sub-Subleasehold Mortgage**”); provided however, only for Sub-Sublessees with whom LESSOR has executed or is executing a Non-Disturbance Agreement with respect to the

Sub-Sublease as contemplated in Section 22.4 of this Lease: (i) the Sub-Sublessee shall forward to LESSOR a copy of such Sub-Subleasehold Mortgage, together with a written notice setting forth the name and address of the holder of such Sub-Subleasehold Mortgage (“**Sub-Subleasehold Mortgage**”) and, in connection therewith; and (ii) in connection therewith, LESSOR agrees that it will, within thirty (30) days of request by the Sub-Sublessee to LESSOR, and upon LESSOR’s reasonable approval of the form of Non-Disturbance Agreement, enter into a Non-Disturbance Agreement with such Sub-Subleasehold Mortgagee. Attached as **Exhibit E-3** is a form of Non-Disturbance Agreement for Sub-Subleasehold Mortgagees which LESSOR has approved for Sub-Subleasehold Mortgagees and if not in such form, then in a form reasonably acceptable to LESSOR and such Sub-Subleasehold Mortgagee. With respect to Sub-Subleasehold Mortgages for which Non-Disturbance Agreements are being given, the Sub-Sublease and Non-Disturbance Agreement for such Sub-Subleasehold Mortgage shall require that the Sub-Sublessee not cross-collateralize the Sub-Subleased Premises with other property not related to the Sub-Sublease, Sub-Sublessee’s interest in the Sub-Subleased Premises, or Sub-Sublessee’s tangible and/or intangible property relating to the Sub-Subleased Premises.

Section 16.4 Unit Financings. The Branded Residential Units and Commercial Units may be encumbered by mortgage liens on each of such Branded Residential Units and Commercial Units without the consent of LESSOR; however, the LESSOR shall not be required to enter into non-disturbance agreements with regard to mortgages of Branded Residential Units or Commercial Units after such Branded Residential Units and/or Commercial Units are created pursuant to the Regime Documents; provided, however, Non-Disturbance Agreements for Commercial Space executed prior to the recording of the Regime Documents creating the Regime shall remain in effect.

Section 16.5 Confirmation. Any mortgage on any leasehold, subleasehold or more remote interest shall be subject to the foregoing provisions and shall not encumber the fee simple title of LESSOR. LESSOR shall, no more than two (2) times a year (as to each Leasehold Mortgage, and as to each Subleasehold Mortgage or each Sub-Subleasehold Mortgage for which LESSOR has signed a Non-Disturbance Agreement), upon reasonable written request, provide such Leasehold Mortgagee, Subleasehold Mortgagee or Sub-Subleasehold Mortgagee with estoppel information as to the status of this Lease in form and substance that is reasonably acceptable to LESSOR. LESSEE and all outstanding Leasehold Mortgages, Subleasehold Mortgagees and Sub-Subleasehold Mortgagees acknowledge and agree that any assignment of an assignor’s interest as LESSEE, Sublessee or Sub-Sublessee or to any Leasehold, Subleasehold or Sub-Subleasehold Mortgagee does not give the LESSEE or its assignee, Sublessee or Sub-Sublessee any lien or encumbrance upon the fee simple ownership and interest in the Property which is vested in LESSOR.

Section 16.6 Extension by Mortgagee. In the event that LESSEE, Sublessee, a Sub-Sublessee or a more remote interest shall fail to timely exercise its option to extend the term of this Lease, any applicable Sublease, Sub-Sublease or more remote interest (to the extent applicable, at the time required to request such extension and subject to the right of such party’s mortgagee to cure any breach as provided in the Non-Disturbance Agreement), the Leasehold Mortgagee, and the holder of any applicable Subleasehold, Sub-Subleasehold or more remote Mortgage, whose name and address are on file with LESSOR pursuant to the provisions of this

Lease (and provided LESSOR has signed a Non-Disturbance Agreement with such Leasehold Mortgagee, applicable Subleasehold Mortgagee, or Sub-Subleasehold Mortgagee) shall have the right, for a period of sixty (60) days following the last day on which LESSEE, applicable Sublessee, Sub-Sublessee or more remote interest could have exercised such option and for such period only, to exercise in the name of LESSEE, applicable Sublessee, Sub-Sublessee or more remote interest such option to extend the term of this Lease, the applicable Sublease, Sub-Sublease or more remote interest (as applicable).

Section 16.7 Cooperation. LESSOR shall reasonably cooperate in executing and delivering any required additional or collateral documentation necessary to effectuate the approvals of LESSOR, including, but not limited to, estoppel letters, provided same are in form and substance satisfactory to LESSOR in its reasonable discretion.

## **ARTICLE 17**

### **DEFAULT**

Section 17.1 Default. If LESSEE shall fail to keep and perform any of the covenants, conditions and agreements herein provided to be performed by said LESSEE, and as to monetary defaults such default shall continue for thirty (30) days from the date of LESSOR's notice to LESSEE of the existence of such default and as to nonmonetary defaults such default shall continue for a period of sixty (60) days from the date of LESSOR's notice to LESSEE of the existence of such default, subject to the other terms of this Lease extending such Cure Period (LESSEE's Cure Period), LESSOR shall have the right, subject to the terms of any Non-Disclosure Agreement(s) previously executed by LESSOR, to treat same as a default hereunder, subject to any cure rights of LESSEE or its Leasehold Mortgagee. Any notice to be provided pursuant to the immediately preceding sentence shall be provided pursuant to the Article hereof entitled "*Notices*" to LESSEE, to Leasehold Mortgagees and mortgagees with whom LESSOR has executed a Non-Disturbance Agreement directing that the said default be corrected within an additional thirty (30) days after the expiration of the applicable LESSEE's Cure Period.

Section 17.2 Extended Cure. As to non-monetary defaults, if LESSEE or Leasehold Mortgagee commences correction of said default within a sixty (60) day period and proceeds with diligence to completion, then the Cure Period shall be extended for a reasonable time as appropriate to complete such cure. This provision shall extend to any mortgagee of all or any part of the Premises with whom LESSOR has executed a Non-Disturbance Agreement in the even such mortgagee elects to exercise its option to cure such default.

Additionally, to the extent of any Additional Rent that is owed by LESSEE after the recording of the Regime Documents creating the Regime, the Association shall have an additional Cure Period (not to exceed one hundred eighty (180) days) to enable the Association to levy a special assessment for the amount of such amount of Additional Rent and the Association shall have thirty (30) days after the imposition of such special assessments to pay such Additional Rent.

Section 17.3 Payment of Rent and Tax Prior to Creation of the Regime. Subject to the provisions of Section 17.5 of this Lease, LESSOR hereby agrees that, notwithstanding any other

provision of this Lease, (a) there will be no cancellation or termination of this Lease so long as all Annual Rent, taxes and insurance payable for the period prior to the recording of the Regime Documents and creation of the Regime are paid when due or cured within the applicable Cure Period, and (b) LESSOR will not, by reason of the nonpayment of Annual Rent, taxes or insurance, exercise its right to cancel or terminate this Lease prior to the expiration of the thirty (30) day Cure Period which commences after the LESSEE Cure Period in Section 17.1.

Section 17.4 After Creation of Regime. From and after the recording of the Regime Documents and creation of the Regime provided the Regime has not been terminated pursuant to the Act prior to the expiration of the Term, LESSOR hereby agrees (i) not to exercise any right to terminate this Lease, and (ii) notwithstanding any default under this Lease and notwithstanding any express or implied right to terminate this Lease set forth herein or at law or in equity, this Lease shall remain in full force and effect and shall not be terminable or terminated by LESSOR until the expiration of the Term of this Lease in accordance with its terms.

Section 17.5 Additional Remedies.

17.5.1 For the duration of the Regime (provided the Regime has not been terminated pursuant to the Act prior to the expiration of the Term), the Regime Documents shall include provisions which describe the obligations of the Association in this Lease and state that the Association (or any successor in interest to the Association) shall (i) act as LESSOR's collection agent for the collection of Annual Rent due from each Branded Unit Owner (excluding the Original Branded Residential Unit Owner) and, upon receipt of the applicable Annual Rent from the Unit Owner(s) (excluding the Original Branded Residential Unit Owner), shall timely pay the Annual Rent to LESSOR as provided in this Lease, and (ii) promptly assess an assessment and, if not timely paid, to cause a claim of lien to be executed and recorded in the Broward County Public Records pursuant to Chapter 718.116, Florida Statutes against the Units of the Regime who do not pay their respective Annual Rent when due. In the event the Association records any claim of lien, it shall deliver notice of such claim of lien together with a copy of the recorded claim of lien to LESSOR within five (5) days after the date such claim of lien is recorded.

17.5.2 If the Sales Consideration Fee for any Branded Residential Unit was not paid when due, thereafter when such Unit becomes a Conveyed Branded Residential Unit, it shall pay both Sales Consideration Fee and interest at the Default Rate, and the Association (or any successor in interest to the Association) shall levy special assessments on such Conveyed Branded Residential Unit for such Sales Consideration Fee and interest, sufficient to collect and pay same to LESSOR.

17.5.3 LESSOR may elect to cure any non-monetary default of LESSEE (which is not cured within the applicable Cure Period of LESSEE and/or its Leasehold Mortgagee) and, upon such cure taking place, all of LESSOR's reasonably incurred costs in connection with such cure shall become Additional Rent which shall be due and payable within thirty (30) days of written notice from LESSOR to LESSEE of such costs incurred by LESSOR (together with providing reasonable supporting documentation of such expense).

17.5.4 The Regime Documents shall collaterally assign the Association's lien rights and the rights of enforcement thereof against the Units to LESSOR solely to the extent necessary to collect the Annual Rent due from such Unit Owner so the Association may pay same to LESSOR.

17.5.5 Each of the foregoing obligations of the Association and Unit Owners shall be affirmatively set forth in the Regime Documents. The common expense definition in the Regime Documents shall include the Annual Rent due and payable under this Lease, and shall provide that the provisions hereby relating to the payment of the obligations set forth in this Section 17.5 and the foregoing obligations of the Association shall not be amended without the prior written consent of LESSOR. In the event of a default under this Lease not cured within the applicable Cure Period, then subject to the provisions of this Section 17.5 and subject to LESSOR not having the right to terminate this Lease, LESSOR shall have all other remedies available against the Association, Branded Residential Units, and Commercial Units, including:

(a) seeking compensatory damages from the Association;

(b) seeking a decree of specific performance requiring the Association to impose the assessments and reassessments required by this Lease in an amount sufficient to pay all Rent required by this Lease in the manner so required, enforce same by foreclosure of the lien securing payment of same and judicial sale (i) collect such assessments against the Units who have not paid its applicable Annual Rent attributable to such Unit, and (ii) collect special assessments (which shall be a common law lien and not a lien for common expenses) against any Branded Residential Unit that has failed to pay Sales Consideration Fee to the extent due upon the conveyance of such Branded Residential Unit, and pay same to LESSOR;

(c) the right to foreclose the annual assessment and special assessment lien rights under the collateral assignment referred to above, and such right shall also be set forth in the Regime Documents.

17.5.6 Lien Rights. The Association shall act as the collection agent for the LESSOR to collect the Residential Annual Rent from each Branded Residential Unit Owner (other than the Original Unit Owner) and Commercial Annual Rent from each Commercial Unit Owner. The Regime Documents shall provide for (i) a special assessment being payable by each Branded Residential Unit Owner for the Residential Annual Rent for its Branded Residential Unit and by each Commercial Unit Owner for the Commercial Annual Rent for its Commercial Unit, and (ii) a lien against each such Unit for failure to pay its Annual Rent attributable to such Unit, which lien shall be enforced by the Association and LESSOR shall be a third party beneficiary entitled to enforce the lien on the Unit(s) which do not timely pay their Annual Rent.

#### Section 17.6 Additional Remedies.

17.6.1 In addition to the remedies set forth above, if an Event of Default exists, then LESSOR shall be entitled to all other remedies available at law or at equity which are available to LESSOR in enforcing leases, as such remedies may exist from time to time, but LESSOR shall not have the right to terminate this Lease, other than pursuant to Sections 17.3 and

17.4 and may not accelerate the payment of Rent. Notwithstanding the foregoing, to the extent LESSOR seeks damages, LESSOR shall only be able to seek from the LESSEE compensatory damages, and LESSOR shall not be entitled to punitive or consequential damages.

17.6.2 Notwithstanding the existence or adequacy of any remedy provided by law for compensatory damages, the LESSEE agrees that LESSOR shall have the right of specific performance to compel the LESSEE to cure any non-monetary defaults not cured within the applicable Cure Period.

17.6.3 LESSOR may elect to cure any non-monetary default of the LESSEE (which is not cured within the applicable Cure Period of the LESSEE and/or its Leasehold Mortgagee) and, upon such cure taking place, all of LESSOR's reasonably incurred costs in connection with such cure shall become Additional Rent which shall be due and payable within thirty (30) days of written notice from LESSOR to the LESSEE of such costs incurred by LESSOR (together with providing reasonable supporting documentation of such expense). If LESSOR elects to cure a non-monetary default of LESSEE, then the LESSEE shall be required to reimburse LESSOR for such reasonable costs incurred by LESSOR in connection with such acts to cure within thirty (30) days of written demand, together with reasonable supporting documentation of such expense.

Section 17.7 Right to Cure. In the event the Property and Improvements (outside the Units) are not maintained in accordance with the standards set forth in this Lease, LESSOR shall notify the LESSEE and give LESSEE a reasonable opportunity to maintain such elements as are required herein. If the LESSEE shall refuse or fail to maintain same after written notice and a reasonable opportunity to cure of at least the applicable Cure Period set forth in this Article 17, then LESSOR shall have the right, but not the obligation, to repair or maintain same to the standard required by this Lease and the reasonable costs of such maintenance shall be payable as Additional Rent within thirty (30) days of written notice from LESSOR to the LESSEE of the costs incurred by LESSOR (together with reasonable supporting documentation of such expense). The fact that LESSOR undertakes any repair or maintenance of the Improvements shall impose no continuing duty on the part of LESSOR to continue such repair or maintenance. This remedy shall be supplemental and cumulative to all other remedies of LESSOR as provided in this Section 17.

## **ARTICLE 18**

### **REPAIRS AND MAINTENANCE**

Section 18.1 Maintenance. LESSEE agrees at its expense to keep and maintain the Property, including but not limited to, grounds, roads, common areas, docks, buildings, furnishings, fixtures and personal property located thereon, in good state of repair and condition.

18.1.1 Exterior walls, roofs and windows on the Improvements of the Property shall be maintained in good repair, reasonable wear, tear, casualty and condemnation excepted. All appurtenances and decorative elements to such structure, such as for example, awnings, shutters, light fixtures, screens, or mailboxes, shall be securely attached, in working order, and not broken, hanging loose, torn, or falling away from the structure, or falling down. All freestanding or

attached privacy or decorative walls and fences on the Property shall be maintained upright and in good repair and in an upright condition and shall be free from significant graffiti.

18.1.2 A regular and on-going, commercially reasonable janitorial program shall be maintained so that the interior areas of buildings and structures on the Property will be kept clean and maintained in a manner and to a degree appropriate to the intended use and function of such areas. A regular and on-going commercially reasonable program of pest control for rodents and insects shall be maintained so that buildings and structures do not become infested. Additionally, a regular and on-going commercially reasonable program of garbage, trash, and litter control shall be maintained so that buildings, structures and grounds are reasonably clean and free of accumulations of these items outside of proper receptacles for same.

18.1.3 All parking facilities, access drives and loading areas on the Property shall be paved and properly graded to assure proper drainage in accordance with the permits for such areas. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located on the Property and intended for use by vehicular or pedestrian traffic shall be maintained. Materially uneven settlement at expansion or control joints, potholes, and damaged or eroding areas shall be repaired, and such areas shall be replaced or resurfaced as reasonably necessary or as reasonably requested by the City Manager to comply with applicable law. Lighting shall be maintained such that light fixtures will not be broken, hanging, or loose, and pole supports, if any, remain suitably anchored and maintained consistent with their original designated purpose. All curbing and bumper stops shall be replaced if damaged in any material respect. All striping, including but not limited to parking space, traffic lane and directional markings within any road, street, or parking area located within the Property shall be repainted as reasonably necessary, so that same will be clearly visible.

18.1.4 All swales on the Property shall be maintained to accommodate their intended drainage function and shall, as reasonably required by the City Manager, be re-graded or re-cut from time to time as may be necessary to comply with applicable legal requirements. Surface grates for catch basins shall remain free of obstructions and shall be open to the air as designed. Sediment and debris which may collect at the bottom of a catch basis shall be periodically suctioned out or dug out so as to prevent such material from being introduced into a storm sewer pipe or other connective facility.

18.1.5 Stormwater pipes on the Property shall be maintained so that they do not have material obstructions to flow, and shall be maintained and periodically inspected to ensure that the pipes remain reasonably free of material root intrusions, sediment build-up, garbage, refuse, plant material, or other debris. Furthermore, any collapsed, cracked, or dislocated pipe or connective fixtures shall be repaired, re-lined, or replaced. Infiltration trenches shall be maintained to ensure that their design capacity to treat and convey water is not compromised.

18.1.6 All landscaping on the Property shall be regularly maintained with proper horticultural and arboricultural practices, including without limitation such replanting and, as is from time to time necessary, mowing, trimming, fertilization, and weed, insect, and disease control.

18.1.7 From and after the recording of the Regime Documents, the provisions of Sections 18.1 and 18.2 shall only be applicable with respect to the Common Areas of the Regime, which maintenance shall be performed, to the extent applicable, by the Association. Each Unit Owner shall be required to maintain the interior of its Unit in accordance with the Regime Documents, but the failure to do so shall not be a default under this Lease.

Section 18.2 Repairs. LESSEE agrees at its expense to make all repairs to the Property (not including the interior of the Units one conveyed to a third party) including but not limited to, buildings, improvements, including electrical, plumbing, sewer, sewer connections, structural and all other repairs that may be required to be made to such improvements on the Property, and may change or re-locate any roads thereon.

Section 18.3 Delivery on Termination. LESSEE at its expense agrees to deliver to LESSOR upon the termination of this Lease the Premises including buildings, improvements (excluding trade fixtures), in good state of repair and in good usable condition, ordinary wear, tear and casualty excepted and if there is a casualty, subject to the obligations with respect to the casualty provisions of this Lease.

Section 18.4 Conveyance/Dedication to Governmental or Quasi-Governmental Authority. Notwithstanding anything herein to the contrary, the LESSEE shall not be responsible for any item in this Article 18 relating to improvements properly conveyed or dedicated to applicable governmental or quasi-governmental agencies or utility companies from and after the date of such conveyance or dedication, except to the extent of any obligations of the LESSEE to any governmental or quasi-governmental agency or utility agreement under any separate agreement between the LESSEE and such governmental or quasi-governmental authority.

## **ARTICLE 19** **PERSONAL PROPERTY**

All Improvements and building systems, fixtures (other than trade fixtures and personal property) shall become the property of LESSOR at the end of the Term and shall be surrendered to LESSOR simultaneously with the return of possession of the Property. The LESSEE agrees that during the last five (5) years of this Lease, none of the foregoing shall be removed from the Property (located outside of the Units), except in a manner consistent with past practice. Nothing in this Article 19 shall create any interest in favor of LESSOR in any personal property leased by the LESSEE from third parties or otherwise owned by third parties, or any personal property located on the Property.

## **ARTICLE 20** **INSURANCE**

Section 20.1 Coverage. During the term of this Lease and during any renewal or extension term of this Lease, the LESSEE, at, no cost to LESSOR, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the LESSEE. The LESSEE shall provide the LESSOR a certificate of insurance evidencing such coverage. The LESSEE's insurance coverage

shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the LESSEE shall not be interpreted as limiting the LESSEE's liability and obligations under this Lease. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, or a lower rating subject to the reasonable approval by the LESSOR.

The coverages, limits, and/or endorsements required herein protect the interests of the LESSOR, and these coverages, limits, and/or endorsements shall in no way be relied upon by the LESSEE for assessing the extent or determining appropriate types and limits of coverage to protect the LESSEE against any loss exposures, whether as a result of this Lease or otherwise. The requirements contained herein, as well as the LESSOR's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the LESSEE under this Lease.

The following insurance policies and coverages are required:

Property Coverage. Coverage must be afforded in an amount not less than 100% of the replacement value of the property with a deductible of no more than \$25,000 (other than Flood which coverage and deductible shall be per standard Federal Flood Insurance policy limits and Windstorm which deductible may be as high as 5% of the project cost coverage; each (including the \$25,000 deductible minimum) subject to availability at commercially reasonable premium rates and subject to LESSOR's reasonable approval) each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause.

This policy shall insure the interests of the owner and LESSEE in the property against all risk of physical loss and damage and name the LESSOR as a loss payee.

The LESSEE shall, at the LESSEE's own expense, take all reasonable precautions to protect the Premises from damage or destruction.

Collection of Insurance. In the event of destruction of or damage to over fifty percent (50%) of any of the Premises or the buildings, other structures and Improvements covered by insurance and LESSEE's election to rebuild the Premises or the buildings, other structures and Improvements pursuant to LESSEE's option provided in this Lease, the funds payable pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by LESSOR, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or Improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances and charter of LESSOR. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of the reconstruction or repair. If the cost of such reconstruction or repair work

shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to LESSEE.

Commercial General Liability. Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the LESSOR, its officials, employees, and volunteers.

Insurance Certificate Requirements.

(a) The LESSEE shall provide the LESSOR with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Lease.

(b) The LESSEE shall provide to the LESSOR a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the LESSEE to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the LESSOR.

(c) In the event the Lease term or any surviving obligation of the LESSEE following expiration or early termination of the Lease goes beyond the expiration date of the insurance policy, the LESSEE shall provide the LESSOR with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect.

(d) The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

(e) The LESSOR shall be named as an Additional Insured on the general liability policy.

(f) The title of the Lease, Contract number, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

The LESSEE has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the LESSOR as an Additional Insured shall be at the LESSEE's expense.

If the LESSEE's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Lease, the LESSEE may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The LESSEE's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the LESSEE that excludes coverage required in this Lease shall be deemed unacceptable and shall be considered breach of contract unless accepted by LESSOR.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Lease is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract unless accepted by LESSOR. In addition, LESSEE must provide to the LESSOR confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Lease. The LESSOR reserves the right to review, at any time, coverage forms and limits of LESSEE's insurance policies.

For claims which are (1) fatalities (2) loss of limb (3) serious brain or spinal injury (4) incidents that result in injury of two or more persons (5) serious bodily burns to 25% or more of the body and/or (6) claims in excess of \$200,000 in damages, the LESSEE shall provide notice to the LESSEE's insurance company or companies and the LESSOR, as soon as practical.

It is the LESSEE's responsibility to ensure that any and all of the LESSEE's independent contractors and subcontractors comply with the insurance requirements set forth in Section 11.13 to the extent applicable. Any and all deficiencies are the responsibility of the LESSEE.

Section 20.2 Insurance After Recording of Regime Documents. After recording of the Regime Documents, the insurance required under this Article 20 shall be provided by the Association with respect to the Common Areas of the Regime. Units within the Regime shall only be required to maintain the insurance required under the Regime Documents, if applicable, but the failure to do so shall not be a default under this Lease.

## **ARTICLE 21** **USE OF PROPERTY**

Section 21.1 Permitted Use. Except as stated below, LESSEE agrees, and LESSOR consents, that the Property shall include a building(s) which contains mixed use consistent with zoning applicable to the Property, from time to time, including retail, office, hotel room, residential dwelling units (whether or not any of such hotel room or residential dwelling uses are submitted to Regime form of ownership), and other uses defined as permitted uses under applicable zoning and which are not either a prohibited use under such zoning or a Prohibited Use under this Lease (collectively "**Permitted Use**") provided however the LESSEE agrees that without the consent of the City Manager: (i) any Branded Apartment Units hereinafter developed on the Premises will be Branded and any Branded Hotel Units shall be Branded and LESSEE will not modify the uses of the Premises in a manner which would result in there being; (i) Branded Apartment Units in excess of \_\_\_\_\_ ( ) Branded Apartment Units; or (ii) Branded Hotel Units in excess of \_\_\_\_\_ ( ) Branded Hotel Units. The Permitted Uses also includes uses such as restaurant(s), cocktail lounge(s), liquor package store, food stores, yacht brokerage offices, convention hall, retail stores, marine stores, marine service station, offices, the Boat Show and other kindred and similar businesses, and also includes all uses for the operation of the Boat Show. Except for the Prohibited Uses as set forth in this Section 21 (unless LESSOR consents to LESSEE conducting the Prohibited Uses on the Property, such consent being subject to LESSOR'S exclusive and sole discretion, and upon such approval, such uses shall be deemed Permitted Uses), and uses which are prohibited under applicable zoning, it is not the intention of the parties that LESSEE shall be unduly restricted in the use of the Property other than LESSEE is required to conduct legal business or businesses on the Property in conformance with the terms of this Lease (excluding the Prohibited Uses without the consent of LESSOR as aforesaid) in keeping with the purpose for which the improvements thereon were constructed.

Section 21.2 No Illegal Activity. LESSEE agrees that it will not knowingly permit the Property or any portion thereof to be used for any illegal purpose.

Section 21.3 Gambling. Without the consent of LESSOR, which may be granted or withheld in LESSOR's absolute discretion, this Lease is issued to LESSEE with the explicit condition that any type of illegal gambling at the Property is prohibited unless future zoning allows such use.

Section 21.4 Live Adult Entertainment. Without the consent of LESSOR, which may be granted or withheld in LESSOR's absolute discretion, no illegal live adult entertainment establishments (as defined in Section 15-156(a) of the City of Fort Lauderdale Code of Ordinances in effect as of the Commencement Date) shall be allowed at the Property unless future zoning allows such use.

**ARTICLE 22**  
**ASSIGNMENT AND SUBLEASING**

Section 22.1 Assignment. Except as otherwise provided in this Lease, LESSEE shall not assign, convey or transfer (all of the foregoing, an “Assignment”) its interest in this Lease to any Person, without the express written consent of LESSOR, provided Unit Owners may transfer and/or encumber their Units without the consent of LESSOR. LESSOR shall have thirty (30) days from the date of written request from LESSEE to LESSOR requesting LESSOR to consent to a proposed Assignment. In the event that LESSOR fails to provide such consent or denial within such 30-day period, LESSEE shall deliver written notice to LESSOR advising LESSOR that LESSOR has not responded to LESSEE within the required 30-day period and LESSOR shall have an additional ten (10) days thereafter to respond to LESSEE with such approval or disapproval. In the event that LESSOR fails to respond after the expiration of the additional 10-day period, LESSOR shall be deemed to have approved LESSEE’s request. Any Assignment set forth above shall not be valid until LESSOR has consented or is deemed to have consented to such Assignment and there shall have been delivered to LESSOR a true copy of the instrument effecting such Assignment, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease on LESSEE’s part to be performed for matters that arise after the effective date of the Assignment. After the aforesaid instruments have been delivered to LESSOR and the LESSOR has consented (or deemed to have consented) to such Assignment, then from and after the effective date of the Assignment, the assigning party shall be released of all obligations under this Lease for matters arising after the effective date of the Assignment, but shall remain liable to LESSOR for all obligations under this Lease for matters that arose or became due prior to the effective date of the Assignment. The factors upon which LESSOR shall base its decision on whether to grant consent under this Section 22.1 (to the extent consent is required) will be limited to whether (i) the proposed assignee and/or any of the direct or indirect principals of such proposed assignee (as may be set forth in the certification to LESSOR by a certified public accountant) meets standards of creditworthiness and financial resource of at least an aggregate minimum net worth of \$10,000,000 upon such proposed assignee acquiring the rights to this Lease which may include the consideration (exclusive of third party financing) being paid by such assignee for such assignment; (ii) the proposed assignee has the reasonable ability to perform the obligations of LESSEE, but as to financial matters, only for reasonably current financial obligations under this Lease, provided none of the monetary obligations under this Lease are delinquent; and (iii) the proposed assignee has prior related business experience for operating property with uses similar to those contemplated in this Lease or as existing at the time of proposed Assignment (or has retained a manager who has such business experience for a length of time of at least five (5) years). Notwithstanding anything in Section 22.1 to the contrary, upon the creation of the Regime, the transfer provisions of this Lease shall not apply to the transfer or sublet of any Unit.

Notwithstanding anything contained herein to the contrary, simultaneous with or after the recording of the Regime Documents and creation of the Regime, LESSEE (i.e., Original Branded Residential Unit Owner) may assign this Lease to the Association without LESSOR’s consent, provided simultaneous therewith, the Association assumes the obligations of LESSEE set forth in this Lease (“Association Assignment”) and thereafter, a copy of such Association Assignment shall be delivered to LESSOR, whereupon the assigning party

shall be released of all obligations under this Lease for matters arising after the effective date of the Assignment, but shall remain liable to LESSOR for all obligations under this Lease for matters that arose or became due prior to the effective date of the Assignment, except the Original Branded Residential Unit Owner shall remain liable to LESSOR and to the Association for the payment of the Sales Consideration Fee payable pursuant to this Lease for transactions that occur after the effective date of the Assignment as to Branded Residential Units which are owned and sold by such Original Branded Residential Unit Owner.

The parties recognize that LESSEE is a limited liability company as of the Commencement Date and LESSOR agrees that any restructuring or change of the direct or indirect membership interests pursuant to the operating agreement of the members of LESSEE shall not be considered an Assignment and, therefore, shall not be a matter requiring the approval of LESSOR or the City Manager.

The foregoing restrictions on Assignment shall not apply to any assignment as collateral of (i) a leasehold, subleasehold, or sub-subleasehold interest pursuant to the granting of a mortgage held by a Leasehold Mortgagee, Subleasehold Mortgagee or Sub-Subleasehold Mortgagee as permitted hereunder on any such interest or the foreclosure of a mortgage encumbering said interest or assignment in lieu thereof, which Assignment shall not require the consent of LESSOR; and (ii) the pledge and/or transfer of the interests in LESSEE or its members, shareholders or partners to the lender providing financing with respect to the Improvements.

Additionally, except for Permitted Transfers, the LESSOR shall have the right to review and approve any assignment of this Lease and LESSOR shall be entitled to be reimbursed for the bona fide third-party costs of LESSOR in connection with a review of each such applicable request for assignment in an amount which shall be not less than One Thousand Five Hundred Dollars (\$1,500) nor more than Twenty Thousand Dollars (\$20,000) in connection with each such assignment request.

Any Assignment or transfer authorized in this Section 22, including, but not limited to, transfers to the Association and transfers of Units or interests in LESSEE shall be deemed a "**Permitted Transfer**."

Section 22.2 Subletting. LESSEE may sublet portions of the Property and/or the Improvements, or grant licenses or concessions thereupon without the written consent of LESSOR; provided however, that subleases to Affiliates of LESSEE, subject to same complying with subsection (c) of the definition of Gross Revenue (and food and beverage lease/concession agreement/management agreements with Affiliates of LESSEE) will require the review and reasonable approval of the LESSOR as to whether rent is Fair Market Value Rent, and that (i) in connection with the sale of a Branded Residential Unit, LESSOR will execute and deliver to the Branded Residential Unit Owner a Partial Release in exchange for the payment of the Sales Consideration Fee for such Branded Residential Unit, and (ii) when a Sublessee requests the LESSOR to provide a Non-Disturbance Agreement in connection with such Sublease (provided such Sublease is in compliance with Section 22.3), and LESSOR has received the consent of the applicable Commercial Unit Owner (to the extent required by such Sublease), then LESSOR shall

have the right to approve such Sublessee and the Sublease in connection with giving such Non-Disturbance Agreement, which approval shall be given in LESSOR's discretion acting reasonably or disapproved specifying in reasonable detail the basis for such disapproval within thirty (30) days of request for such approval. LESSOR shall have no right or duty to review or approve sublessees of Apartment Units or tenants of Branded Residential Units. In determining whether to approve or not approve a proposed Sublessee and Sublease pursuant to the preceding sentence, LESSOR may consider the specific business experience of the Sublessee (or its managers, if applicable, who, if relying on the business experience of the manager versus the Sublessee, then such management agreement with such manager must have a minimum term of one year), the ability of such Sublessee to carry out the purpose or activity of the Sublease, and as to financial obligations, the ability to perform only the reasonably current financial obligations under the Sublease, the reputation of the Sublessee, the rent payable pursuant to the Sublease, the Sublease complies with the requirements of a Sublease in Section 22.3 and other reasonable factors. Any (i) sublease, sub-license or sub-concession, is throughout this Lease referred to as a "**Sublease**" (ii) sub-sublease, sub-sub-license or sub-sub-concession is throughout this Lease referred to as a "**Sub-Sublease**"; (ii) Sublessee leasing pursuant to a Sublease is referred to as a "**Sublessee**", and (iv) any Sub-Sublessee leasing pursuant to a Sub-Sublease is referred to as "**Sub-Sublessee**". Each such Sublease or Sub-Sublease shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions and shall be subject to the terms of any non-disturbance agreement between LESSOR and such Sublessee or Sub-Sublessee (as applicable).

No Sublease or Sub-Sublease shall relieve LESSEE from liability for any of its obligations hereunder, and in the event of any such Sublease or Sub-Sublease, LESSEE shall continue to remain primarily liable for all financial obligations pursuant to this Lease and for the performance and observance of the other agreements on its part herein contained; provided, however, that from and after the creation of the Regime, the Association shall only be responsible for imposing assessments against the applicable Branded Residential Units and/or Commercial Units and maintaining the Common Areas of the Regime. The Branded Residential Unit Owners and Commercial Unit Owners shall only be obligated to timely pay their respective Annual Rent for their Unit to the Association and to perform obligations with respect to their Unit in accordance with the provisions of the Regime Documents, the failure to do so shall be enforceable by the Association pursuant to the Regime Documents, and by LESSOR as may be provided therein pursuant to the provisions of this Lease with respect to collection of Annual Rent owed by such Unit Owner which relate thereto, but shall not be a default under this Lease.

Notwithstanding anything contained herein to the contrary, Branded Residential Units may be conveyed or sublet by LESSEE or Unit Owner without the consent of LESSOR; provided, however, that (i) in connection with the initial conveyance of title of any Branded Residential Unit by Original Branded Residential Unit Owner to a third party, the Original Branded Residential Unit Owner shall be required to pay to LESSOR the Sales Consideration Fee in connection with the transfer of such Conveyed Branded Residential Unit.

Notwithstanding anything contained herein to the contrary, the transfer (including Sublease(s)) or encumbrance of Branded Residential Units or Commercial Units may

be made without LESSOR's consent and such transfers or encumbrance shall not be subject to restriction pursuant to this Section 22, but shall always be subject and subordinate to this Lease.

Section 22.3 Recognition of Sublease. Upon LESSEE's written request (or Sublessee's written request if provided with the written consent of LESSEE), LESSOR (if required), within thirty (30) days of the request, will execute and deliver, substantially in the form attached hereto as Exhibit D-1, and suitable for recording, a separate Non-Disturbance Agreement with each Sublessee named in such request, which Sublease (i) provides for an annual rental equal to or in excess of at least one hundred percent (100%) of the Fair Market Value Rent; (ii) such Sublease is in the form substantially consistent with Exhibit J-1 attached hereto and made a part hereof or such other form as may be requested by LESSEE and reasonably acceptable to LESSOR; and (iii) has a term not in excess of the remainder of the Term of this Lease, which Non-Disturbance Agreement will provide that LESSOR will not terminate such Sublease or the leasehold estate created thereunder nor disturb such Sublessee's possession and rights thereunder upon any termination of this Lease prior to the expiration of the Term. Upon any termination of this Lease, then as to each such Sublease, LESSOR shall thereafter recognize the Sublease as a direct lease between LESSOR and Sublessee as to the Sublease unless such Sublessee shall then be in default under its Sublease and the time to cure such default available to said Sublessee and any Subleasehold Mortgagee of said Sublessee (who has a Non-Disturbance Agreement) shall have expired; provided that in such Non-Disturbance Agreement the Sublessee (and the Sub-Leasehold Mortgagee to the extent it becomes the Sublessee) shall agree to attorn to LESSOR and its successors and assigns, in case of any termination of this Lease, and, if applicable, the termination of the Sublease. The Sublessee under any Sublease which does not meet the foregoing criteria may also request a Non-Disturbance Agreement, provided that said Sublessee submits the written consent of LESSEE (if required) and receives the written approval of LESSOR. Also upon any termination of this Lease, the recognition of the Sublessee (and the Sub-Leasehold Mortgagee to the extent it becomes the Sublessee) in its Sublease as a direct lease between LESSOR and such Sublessee (or the Sub-Leasehold Mortgagee, as applicable, to the extent it becomes the Sublessee) shall, at the sole exclusive option of LESSOR, either remain as a direct lease between LESSOR and such Sublessee or, at the option of LESSOR (which may be exercised at any time thereafter), LESSOR may enter into a new lease for the Subleased Premises and/or other premises as a primary lease between LESSOR and a third party ("Third Party Sublessor") and LESSOR will assign its interest in the Sublease to the Third Party Sublessor, whereupon the Sublease shall again be deemed to be a Sublease between Sublessee and the Third Party Sublessor of the primary lease between LESSOR and such Third Party Sublessor and a new Non-Disturbance Agreement shall be executed by LESSOR, Third Party Sublessor and Sublessee. In the event that a Sublease is submitted to LESSOR for which LESSEE and/or the Sublessee is requesting a Non-Disturbance Agreement, then prior to LESSOR being required to execute such Non-Disturbance Agreement, LESSEE shall provide a certification to LESSOR certifying that the provisions of Section 22.3(i) through (iii), inclusive, have been satisfied.

Notwithstanding anything contained herein to the contrary (i) the provisions of Section 22.3 shall not apply to the transfer or encumbrance of any Branded Residential Unit or Commercial Unit, (ii) a Branded Residential Unit may be transferred or encumbered without consent or approval of LESSOR and without any other restriction, other than (x) in connection with the initial transfer of title to a Branded Residential Unit that is not a

Conveyed Branded Residential Unit from Original Branded Residential Unit Owner to a third party, the Original Branded Residential Unit Owner shall pay LESSOR the Sales Consideration Fee for such Conveyed Branded Residential Unit; whereupon LESSOR shall execute and deliver a Partial Release for such Conveyed Branded Residential Unit, and (iii) a Unit Owner's right to its Unit during the Term shall not be disturbed by LESSOR, other than with LESSOR's enforcement of its collateral lien right against such Unit as provided in Section 17.5 and subject to all applicable provisions of this Lease.

Section 22.4 Recognition of Sub-Sublease. At Sublessee's or Sub-Sublessee's written request (provided LESSEE's written consent has been provided) and provided the Sublessee has consented (to the extent required by such Sublease and the request is made by the Sub-Sublessee), LESSOR, within 30 days after receiving the request, will execute and deliver, substantially in form attached hereto as Exhibit D-2 and suitable for recording, a separate Non-Disturbance Agreement with each Sub-Sublessee named in such request whose Sub-Sublease (i) provides for an annual rent equal to or in excess of at least one hundred percent (100%) of the Fair Market Value Rent for that Sub-Sublease; (ii) such Sub-Sublease is in a form request by Sub-Sublessee consistent with Exhibit J-2 or such other form reasonably acceptable to the LESSOR and LESSEE; and (iii) has a term not in excess of the remainder of the Term of this Lease, which Non-Disturbance Agreement will provide that LESSOR will not terminate such Sub-Sublease or the leasehold estate created thereunder nor disturb such Sub-Sublessee's (and its Sub-Subleasehold Mortgagee who has a Non-Disturbance Agreement) possession and rights thereunder upon any termination of this Lease and upon any such termination as to a Sub-Sublessee (and its Sub-Subleasehold Mortgagee who has a Non-Disturbance Agreement) when both the Sublessee and LESSEE are in default beyond all applicable Cure Periods, and LESSOR shall thereafter recognize the Sub-Sublease as a direct lease between LESSOR and the Sub-Sublessee as to the Sub-Sublease unless such Sub-Sublessee shall then be in default under its Sub-Sublease and the time to cure such default available to such Sub-Sublessee and the Cure Period provided any Sub-Subleasehold Mortgagee of said Sub-Sublease shall have expired or any Sub-Subleasehold Mortgagee of such Sub-Sublease with whom LESSOR has signed a Non-Disturbance Agreement has expired; provided that in such Non-Disturbance Agreement the Sub-Sublessee and Sub-Subleasehold Mortgagee who has a Non-Disturbance Agreement shall agree to attorn to LESSOR and its successors and assigns in case of any termination of this Lease and any applicable Sublease. The Sub-Sublessee under any Sub-Sublease which does not meet the foregoing criteria in Section 22.4(i)-(iii) above may also receive a Non-Disturbance Agreement, provided that LESSEE, Sublessee, Sub-Sublessee and the LESSOR have consented to same. Also upon any termination of this Lease and the Sublease, the recognition of the Sub-Sublessee in its Sub-Sublease as a direct lease between LESSOR and such Sub-Sublessee (or the Sub-Subleasehold Mortgagee, as applicable, to the extent it becomes the Sub-Sublessee), shall remain as a direct lease between LESSOR and such Sub-Sublessee (on the same terms as the Sub-Sublease) or, at the option of LESSOR (which may be exercised at any time thereafter) LESSOR may enter into a new lease for the Sub-Subleased Premises as a primary lease between LESSOR and a third party ("Third Party Sub-Sublessor") and LESSOR will assign its interest in the Sub-Sublease to the Third Party Sub-Sublessor, whereupon the Sub-Sublease shall again be deemed to be a Sub-Sublease between the Sub-Sublessee and Third Party Sub-Sublessor and such Third Party Sub-Sublessor shall execute a Sub-Sublease on the same terms as the existing Sub-Sublease, whereupon the Sub-Sublease between Third Party Sub-Sublessor and the Sub-

Sublessee shall be deemed a Sub-Sublease and a new Non-Disturbance Agreements shall be executed by LESSOR, Third Party Sub-Sublessor (if applicable) and Sub-Sublessee. Notwithstanding the provisions of the immediately preceding sentence, in the event that the Sublease was terminated and LESSOR determines that it would like the Sub-Sublease to be a Sublease rather than a Sub-Sublease as provided in the immediately preceding sentence, then the immediately preceding sentence shall be deemed amended to provide that the Third Party Sub-Sublessor will enter into a Sublease with the Sub-Sublessee, whereupon such Sublease will be on the same terms and provisions as the Sub-Sublease and there will be no requirement for the Third Party Sub-Sublessor to enter into a lease with a Third Party Sub-Sublessor and such Third Party Sub-Sublessor to enter into a Sub-Sublease with the Sub-Sublessee and LESSOR, Third Party Sub-Sublessor and Sub-Sublessee will execute a new Non-Disturbance Agreement reflecting the foregoing. In the event that a Sub-Sublease is submitted to LESSOR for which LESSEE, Sublessee and/or the Sub-Sublessee is requesting a Non-Disturbance Agreement, then prior to LESSOR being required to execute such Non-Disturbance Agreement, LESSEE shall provide a certification to LESSOR certifying that the provisions of Section 22.4(i) through (iii) have been satisfied.

**Section 22.5** Provisions Applicable to Non-Disturbance Agreements for Subleases and Sub-Subleases. Whenever the LESSOR's consent is required, the LESSOR shall either consent or specify the basis for LESSOR's disapproval within thirty (30) days of request for such approval or such consent shall be deemed given. All reasonable costs and expenses incurred by LESSOR to review and approve or decline a request for a Non-Disturbance Agreement in connection with a Sublease and/or Sub-Sublease as requested by LESSEE shall be paid by the requesting Sublessee or Sub-Sublessee to LESSOR prior to delivery of the requested Non-Disturbance Agreement, provided that the costs of such reimbursement shall not exceed \$1,500.

## **ARTICLE 23** **SUBORDINATION**

LESSOR shall never be obligated to encumber, pledge or subordinate its fee simple title interest in the Property to the lien, encumbrance or interest in LESSEE or any party claiming by or through or under LESSEE, other than with respect to the provisions of the Master Declaration which may be an encumbrance of LESSOR's fee simple title in the Property subject to terms and conditions thereof.

## **ARTICLE 24** **ALTERATIONS AND ADDITIONS**

LESSEE shall be permitted to renovate, develop and construct Improvements on the Property during the Term of this Lease in conformance with this Lease, the Site Plan, applicable zoning requirements and other governmental requirements. The LESSEE agrees to make no other material alterations, changes or additions to the Property, without first obtaining the written consent of the City Manager. LESSOR agrees that it will approve or deny such material changes, material alterations, or material additions in its reasonable discretion, in the same manner as set forth in Sections 11.2 and 11.3 hereof.

Notwithstanding anything contained in this Lease to the contrary, Unit Owners may make improvements and alterations to their Units in accordance with the provisions of the Regime Documents without the consent of LESSOR (as landlord) or City Manager, provided same is performed in accordance with applicable governmental requirements.

**ARTICLE 25**  
**TITLE TO PROPERTY**

LESSOR hereby covenants and agrees that provided the LESSEE complies with the material terms of this Lease and is not in material default of any of its obligations hereunder beyond any applicable Cure Period, that the LESSEE shall quietly and peaceably hold, possess and enjoy the Property for the full term of this Lease without any let, hindrance or molestation from LESSOR, or any persons claiming by, through or under it, and said LESSOR hereby covenants and agrees that, as of the Commencement Date, LESSOR is seized of the Bahia Mar Complex in fee simple free and clear of all exceptions and encumbrances except for the Permitted Exceptions. LESSOR represents that it will not take action after the Commencement Date of this Lease that would change the status of LESSOR's title as of the Commencement Date without the LESSEE's written consent in its sole discretion. After the Commencement Date, any asserted possessory rights of Sublessees or operators under the Original Lease, the Boat Show Lease, or disputes concerning LESSEE's decisions with respect to whether to continue same under this Lease, shall be LESSEE's exclusive responsibility as provided in Section 5.1. LESSOR will defend the title to the Property and occupation of same by LESSEE during the term of this Lease against all claims arising by, through, or under LESSOR and which fall within the covenants of this Article 26, and will, at its own cost, perfect or defend any and all legal proceedings or suits which may be instituted by any Person or Persons whomsoever, directly or indirectly falling within the covenants of this Article 26, except for the Permitted Exceptions.

**ARTICLE 26**  
**RENT, SALES CONSIDERATION FEE, AND TRANSFER FEE**

Section 26.1 Rent. LESSEE shall pay to LESSOR the Rent (to the extent due); however, (i) the Sales Consideration Fee shall be paid within five (5) business days after the closing of the initial conveyance of title of each Branded Residential Unit which is not a Conveyed Branded Residential Unit to a third party purchaser, and (ii) the Residential Annual Rent for each Branded Residential Unit shall be payable by the Branded Residential Unit Owner (other than the Original Branded Unit Owner) to the Association and Commercial Annual Rent for each Commercial Unit shall be payable by each Commercial Unit Owner to the Association, and promptly upon the Association's receipt of such Annual Rent, the Association shall pay the Annual Rent received by the Association to LESSOR on the applicable Annual Payment Date (prorated for any portion of a calendar year applicable to the Annual Payment Date), and promptly after the Association's later receipt of Annual Rent owed by a Unit Owner, it shall promptly remit same to the LESSOR. Transfer and/or assignment of this Lease to the Association shall not relieve the Original Branded Residential Unit Owner of its obligation to pay the Sales Consideration Fee.

Section 26.2 Commercial Annual Rent Computation. Within one-hundred twenty (120) days after the end of each calendar year, LESSEE (until the creation of the Regime) and the

Commercial Unit Owner (after the creation of the Regime) shall pay to LESSOR (prior to the creation of the Regime) and each Commercial Unit Owner shall pay to the Association (after the creation of the Regime) as collection agent, to remit to the LESSOR, a sum equal to the Commercial Annual Rent from each Commercial Unit Owner for its Commercial Unit for the preceding calendar year. Additionally, the LESSEE (prior to the creation of the Regime) and each Commercial Unit Owner shall further deliver to the LESSOR (prior to the creation of the Regime) and to the Association (after the creation of the Regime) for delivery to the LESSOR at said time a detailed statement duly signed by a CPA Firm selected by LESSEE (prior to creation of the Regime) and each such Commercial Unit Owner (after creation of such Regime) certified to LESSOR and the Association (after creation of the Regime) setting forth an itemization of all Gross Revenue for the preceding calendar year, which statement shall further show and indicate the Gross Revenue, if any, for each of the classifications set forth in the definition of Gross Revenue. Such detailed statement shall be similar in format with the detailed statements provided by the Master Lessee in the lease year under the Master Lease prior to the Commencement Date of this Lease.

Section 26.3 Records. LESSEE (until the creation of the Regime) and the Owner of a Commercial Unit (after the creation of the Regime) shall keep and maintain accurate records and complete books and records of account indicating all of LESSEE's (until the creation of the Regime) and the Commercial Unit Owner's (after the creation of the Regime) Gross Revenue. Said records and statements of Gross Revenue shall be kept and maintained by LESSEE (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) in accordance with generally accepted accounting principles and shall be available to be examined by LESSOR or its agents, employees or representatives, and said records shall be kept and maintained, or a true and accurate copy thereof shall be kept and maintained in Miami-Dade County or Broward County for a period of at least five (5) years. In the event that LESSEE (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) has intentionally, willfully and with the intent to defraud made any reports to LESSOR showing less Gross Revenue than actually received, such conduct and action on the part of LESSEE (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime) shall constitute a material breach of the covenants of this Lease by LESSEE (until the creation of the Regime) and the Commercial Unit Owner (after the creation of the Regime), subject to the cure provisions set forth in Section 17 of this Lease. In the event that litigation has been timely instituted, the applicable records shall be maintained until all legal proceedings have been resolved.

Section 26.4 Licenses, Fees and Taxes. LESSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, county, and local taxes, assessments and fees, which are now or may hereafter be levied upon the Property or the estate hereby granted, or upon LESSEE, or upon any of LESSEE's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all federal, state, county and local licenses and permits, now or hereafter required for the operation of the business conducted by LESSEE. To the extent permitted by law, LESSEE shall be permitted to pay any assessments in annual installments and to the extent such assessments may be payable in installments then LESSEE shall only be required to pay those installments which shall become due and payable during the Term. LESSEE shall have the right, at its sole expense, to contest the

amount or validity, in whole or in part, of any taxes, assessments or fees by appropriate proceedings and by complying with all applicable requirements of the appropriate taxing authority. LESSOR shall not be required by LESSEE to join in any contest or proceedings unless the provisions of any law or regulations then in effect require that the proceedings be brought by or in the name of LESSOR, in which case LESSOR shall reasonably cooperate with LESSEE in such protest; provided, however, LESSEE shall pay all reasonable costs or expenses (including reasonable attorneys' fees and costs) incurred by LESSOR in conjunction therewith. As a condition to any such contest, LESSEE shall be required to institute appropriate proceedings on a timely basis and to have set aside the amount of money as required by applicable law for the payment of any contested taxes, assessments and fees including amounts necessary for the payment of interest and penalties, if applicable.

Notwithstanding the foregoing, LESSEE shall be responsible for the payment of taxes and assessments for the Property prorated through the Initial Rent Payment Date and after the creation of the Regime, the Unit Owners shall be responsible for paying taxes and assessments on its Unit(s) and neither LESSEE nor LESSOR shall be responsible for the payment of such taxes and assessments nor for such Unit Owner's failure to pay same, and the failure of such Unit Owner to pay same shall not be a default under this Lease.

Section 26.5 Proration. Taxes, assessments and other expenses in connection with the Property shall be prorated as of the first and last day of the Term (or such earlier date as provided in this Lease) with LESSEE being responsible for its obligations for taxes, assessments and other expenses for the portion of the Property owned by LESSEE pursuant to this Lease for the period between the Commencement Date and the expiration of the Term. To the extent that there are real estate and/or personal property ad valorem taxes (or payment in lieu of real estate taxes, special or non-ad valorem assessments or a municipal service charge) of general applicability imposed upon the Property or the estate hereby granted, or upon LESSEE, or upon any of LESSEE's property used in connection therewith during the Term, then LESSEE shall be obligated to pay any and all such taxes (or payment in lieu of taxes, special or non-ad valorem assessments and municipal service charge) of general applicability imposed during the Term prior to same becoming delinquent.

Section 26.6 Utilities. During the Term, LESSEE shall pay when due, all water, stormwater, utility and other expenses and fees which are now or hereafter charged or assessed with respect to the Property, but is not responsible for expenses of LESSOR for utilities consumed by LESSOR pursuant to this Lease or for Sublessee's utilities (provided LESSEE shall require its Sublessees to pay such utilities to the extent LESSEE is not required to pay same pursuant to such Sublease). Subject to the foregoing, all such water, sewer, stormwater, garbage, utility and other public fees or charges shall be paid by LESSEE promptly prior to delinquency. Notwithstanding anything contained herein to the contrary, from and after the creation of the Regime, it shall be (i) the obligation of the Association to pay for the utilities in this Section 26.6 for or assessed against the Common Areas of the Regime (except the Units therein) and LESSEE's interest in the Property (other than the Units) (i.e. where such utilities are not charged, assessed, or imposed by the provider thereof upon the Units, but are properly billed to the Association), and (ii) each Unit Owner shall be obligated to pay for the utilities charged, assessed, or imposed by the provider thereof on its Unit and the failure of the Unit Owner to do so shall not be a default under this Lease.

Section 26.7 Additional Rent. If LESSOR is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of LESSEE to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease which breach is not cured by LESSEE within the applicable Cure Period, LESSEE agrees to pay the reasonable sums so paid or the reasonable expense so incurred, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Rent payable within thirty (30) calendar days after written demand therefor (together with reasonable supporting documentation of such sums expended) together with interest thereon at the Default Rate after said thirty (30) day period if not paid within such thirty (30) days period.

Section 26.8 Late Payments - Interest. LESSOR shall be entitled to collect interest at the Default Rate from the date any sum is due to LESSOR until the date paid on any amounts that are not paid within ten (10) business days of their due date under this Lease. The right of LESSOR to require payment of such interest and the obligation of LESSEE to pay same shall be in addition to and not in lieu of the right of LESSOR to enforce other provisions herein and to pursue other remedies provided by law.

Section 26.9 Place of Payments. All payments of Rent required to be made by LESSEE (prior to the creation of the Regime Documents) and by the Association (after the creation of the Regime Documents) to LESSOR under this Lease shall be made payable to LESSOR at Office of City Manager, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, or to such other office or address as may be substituted therefor pursuant to Section 29.1. All Rent (together with all applicable sales tax thereon) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

Section 26.10 Proration. LESSOR and LESSEE agree that the Rent payable under the Original Lease shall be prorated with the Rent payable under this Lease as of the Commencement Date.

Section 26.11 Sales Consideration Fee. The Original Branded Residential Unit Owner agrees that the Association has a lien right on each Branded Residential Unit to secure the payment of the Sales Consideration Fee applicable thereto and a lien may be filed if such Sales Consideration Fee is not paid within thirty (30) days after written notice from the City or Community Trust Entity (as applicable) to the Original Branded Residential Unit Owner and the Association. While the Original Branded Residential Unit Owner (and the Association as LESSEE to the extent not paid by the Original Branded Residential Unit Owner) is responsible for payment of the Sales Consideration Fee, it is the intent of the Parties that at each initial closing, the closing agent handling such closing would collect the Sales Consideration Fee payable for such Branded Residential Unit and remit same to LESSOR, together with a copy of an executed closing statement for such Branded Residential Unit, and that in connection with such closing, the Association, LESSOR and Community Trust Entity (as applicable) would provide a partial release (in a form to be prepared by LESSEE or Original Branded Residential Unit Owner and such form reasonably approved by the City Manager) for such Branded Residential Unit indicating that such Sales Consideration Fee for such Branded Residential Unit has been paid ("**Partial Release**"), which Partial Release would be recorded (at the Original Branded Residential Unit Owner's or it's

grantee's expense) at such closing simultaneous with the closing agent disbursing such Sales Consideration Fee to LESSOR and the Community Trust Entity (as applicable). Upon payment of the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit, such Branded Residential Unit becomes a Conveyed Branded Residential Unit, it shall no longer be obligated to pay the Sales Consideration Fee, and the Association shall not impose any assessment on such Conveyed Branded Residential Unit for the Sales Consideration Fee. If, however, the Sales Consideration Fee for any Branded Residential Unit that is not a Conveyed Branded Residential Unit was not paid when due, thereafter the Original Branded Residential Unit remains obligated to pay the Sales Consideration Fee but with interest at the Default Rate, and the Association shall impose a special assessment on such Branded Residential Unit for such Sales Consideration Fee and interest, collect same, and pay same to LESSOR and Community Trust Entity (as applicable). The Sales Consideration Fee is a separate and different obligation than the Residential Annual Rent and the Transfer Fee. The LESSOR and Community Trust Entity (as applicable) shall be a third-party beneficiary of such lien rights and shall be entitled to enforce same to the extent the Association shall fail to do so.

Section 26.12 Transfer Fee. Each Subsequent Branded Residential Unit Owner agrees that the Association has a lien right on such Conveyed Branded Residential Unit to secure the payment of any Transfer Fee applicable thereto and a lien may be filed if such Transfer Fee is not paid within thirty (30) days after written notice from the City or Community Trust Entity (as applicable) to the Subsequent Branded Residential Unit Owner and the Association. While such Subsequent Branded Residential Unit Owner (and the Association as LESSEE to the extent not paid by the applicable Subsequent Branded Residential Unit Owner) is responsible for payment of the Transfer Fee, it is the intent of the Parties that at each closing of a Subsequent Sale the closing agent handling such closing would collect the Transfer Fee payable for such Conveyed Branded Residential Unit and remit same to LESSOR and Community Trust Entity (as applicable), together with a copy of an executed closing statement for such Conveyed Branded Residential Unit, and that in connection with such closing, the Association, LESSOR and Community Trust Entity (as applicable) would provide a partial release (in a form to be prepared by the Subsequent Branded Residential Unit Owner and such form reasonably approved by the City Manager) for such Conveyed Branded Residential Unit indicating that such Transfer Fee for such Conveyed Branded Residential Unit has been paid ("**Partial Release**"), which Partial Release would be recorded (at Subsequent Branded Residential Unit Owner or the grantee's expense) at such closing simultaneous with the closing agent disbursing such Transfer Fee to LESSOR and Community Trust Entity (as applicable). If, however, the Transfer Fee for any Conveyed Branded Residential Unit payable at each Subsequent Sale was not paid when due, such Subsequent Branded Residential Unit Owner remains obligated to pay the Transfer Fee but with interest at the Default Rate, and the Association shall impose a special assessment on such Conveyed Branded Residential Unit for such Transfer Fee for and interest for such Subsequent Sale, collect same, and pay same to LESSOR and Community Trust Entity (as applicable). The Transfer Fee is a separate and different obligation than the Residential Annual Rent and the Sales Consideration Fee. The LESSOR and Community Trust Entity (as applicable) shall be a third-party beneficiary of such lien rights and shall be entitled to enforce same to the extent the Association shall fail to do so.

**ARTICLE 27**  
**BONDS FOR IMPROVEMENTS**

The LESSEE shall furnish statutory payment and performance bonds pursuant to Florida Statute Chapter 713 and Florida Statute Chapter 255 (from itself, a Sublessee or their respective contractor(s)) for work on publicly owned property written by a Corporate Surety company on the U.S. Department of Treasury current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, as same may be updated from time to time, in the full amount of any contract entered into by LESSEE or any Sublessee for any major capital improvement valued in excess of \$10,000,000, with said bonds being executed and issued by a resident agent licensed by and having offices in the State of Florida representing such Corporate Surety at the time such capital improvements are to be constructed, conditioned upon full and faithful performance by the LESSEE or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify LESSOR as additional obligee. If the bonds are provided by the contractor, then to the extent commercially obtainable, the bond shall provide that a default by the LESSEE or Sublessee as the case may be, in the performance of the contractor's contract, shall not be raised as a defense to LESSOR as one of the obligee's requiring performance of such construction contract by the surety.

**ARTICLE 28**  
**NOTICES**

Section 28.1 Notices. All notices required by law or by this Lease to be given by one party to the other shall be in writing, and the same shall only be deemed given if forwarded as follows:

By certified mail, return receipt requested, overnight courier delivery service such as Federal Express or hand delivery to the following addressees:

LESSOR: City of Fort Lauderdale  
City Manager  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

with a copy to: City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

LESSEE: \_\_\_\_\_  
1175 N.E. 125<sup>th</sup> Street, Suite 102  
North Miami, Florida 33161  
Attn: James D. Tate, President

with a copy to:

Greenspoon Marder LLP  
200 East Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 33301  
Attn: Barry E. Somerstein, Esq.

or to such other addressees as the parties may by writing designate to the other party and to such Leasehold Mortgagee as the LESSEE may designate in writing to LESSOR.

Section 28.2 Personal Delivery. The notice may also be served by personal delivery (including e-mail with confirmation of receipt) to LESSOR or LESSEE.

Section 28.3 Notice to Leasehold Mortgagee. The notice to any Leasehold Mortgagee, as provided in Article 16 (entitled *Leasehold Mortgagee*) will only be provided if such Leasehold Mortgagee has provided its contact information to LESSOR.

Section 28.4 Delivery. Notices delivered by personal delivery shall be deemed delivered when received, notices delivered by Certified Mail, returned receipt requested, shall be deemed delivered upon receipt or when receipt is refused, and notices sent by over-night courier delivery service shall be deemed delivered one business day after delivery to such over-night courier service.

## **ARTICLE 29**

### **TAXES AND ASSESSMENTS**

From the Commencement Date until the tax year of recording of the Regime Documents, LESSEE will be required to pay all taxes and assessments lawfully imposed or levied against the Property or LESSEE's personalty situated thereon, whether such taxes are levied against the land, improvements located thereon or personalty situated thereon. From and after the recording of the Regime Documents and creation of the Regime: (i) the Unit Owner(s) of each Unit shall be required to pay all taxes and assessments lawfully imposed or levied against such Unit(s), as applicable, and such Unit Owner's personal property situate therein, but the failure of a Unit Owner to pay such tax or assessment shall not be a default under this Lease, and (ii) the LESSEE shall pay all taxes and assessments lawfully and generally imposed on, applicable to, or assessed against the Common Areas of the Regime and any of its obligations set forth in Section 26.4 of this Lease.

Subject to the immediately preceding paragraph, in the event that as a result of legislation or judicial precedent or decree subsequent to the year of the Commencement Date, any tax or assessment lawfully levied or imposed against the Property or personalty situated thereon as aforesaid, ceases to be a lawful levy or in the event the land, improvements, or personalty no longer are subject to such tax or assessment, then for the period of time before a replacement tax or assessment is levied, LESSEE agrees to continue to pay to LESSOR until creation of the Regime, a "Payment In Lieu of Taxes" in an amount equal to the amount LESSOR would have realized from the imposition, levy and payment of such taxes and assessments on the Property, had the continued imposition or levy of such taxes or assessments remained lawful or the such property remained subject to same, but the failure of the Unit Owner (after the creation of the Regime) to pay same shall not result in a default under this Lease.

At the time any such imposition or levy ceases to be lawful or property previously subject to same is no longer subject to same, for purposes of calculation the Payment in Lieu of Taxes, the base assessed value of the object of the tax shall initially be determined in accordance with the assessed value on the tax rolls for the preceding year. Thereafter the assessed value of such object shall be adjusted by the overall change in the City's overall assessment roll, excluding changes due to new construction and annexation. Such Payments In Lieu of Taxes shall be in accordance with the City's net portion of the millage rates adopted by the taxing authorities in each successive year of the Term until taxes and assessments once again become lawful. In the case of non-ad valorem assessments, for the Payment In Lieu of Taxes, each assessment shall be determined as same were determined in the prior year. As to non-ad valorem assessments, thereafter, each assessment shall be adjusted in accordance with how such non-ad valorem assessments may otherwise be adjusted in a manner consistent with adjustments to the non-ad valorem assessment roll in future years for each such assessment in question and subject to any limitation on the amount of ad valorem tax due as generally applicable to such taxes on property not owned by the City which are subject to Payment in Lieu of Taxes. Such calculated contributions for the ad valorem and non-ad valorem assessments for each year shall be summed for such year's Payment In Lieu of Taxes. The Payment in Lieu of Taxes herein shall be payable in the same manner and within the same time frames as ad valorem taxes.

The LESSOR and the LESSEE agree that neither this Lease, nor the provisions of this Lease, shall operate to prevent, bar, or estop the City in its sovereign capacity from creating or imposing any generally applicable fees, charges, assessments, special assessments, or taxes, or any other types of generally applicable measures to create municipal revenue (which are not discriminatorily applied against the LESSEE or the Property) which may become due and payable (i) upon the Property, the Units, or personalty, or (ii) payable by LESSEE, Sublessees, Sub-Sublessees, or their respective visitors and guests, or (iii) payable as a result of activities, or in exchange for municipal services, or (iv) otherwise payable.

**ARTICLE 30**  
**PERMITTED EXCEPTIONS**

It is understood by and between LESSOR and LESSEE that this Lease is subject to the Permitted Exceptions.

**ARTICLE 31**  
**BOAT SHOW**

In connection with the Boat Show, even though portions of the Boat Show may be conducted from portions of the Property, all revenue paid by the operator of the Boat Show for use of any portion of the Premises pursuant to the Boat Show Lease shall be paid to the Master Lessee and included in Gross Revenues pursuant to the Master Lease and not pursuant to this Lease.

LESSEE and all those claiming by, through or under LESSEE and their guests and invitees hereby agree and are put on notice that (subject to the terms of the Boat Show Lease) the Boat Show Tenant has the right of access to and use the Show Site during the Show Dates during each year during the term of the Boat Show Lease to operate the Boat Show, which shall include,

without limitation, the staging, mobilization, restoration, repair, and cleaning activities of the Boat Show during the Show Dates (and thereafter for restoration or repairs, if necessary), including providing access to the Show Site during the Show Dates to their invitees, contractors, agents, employees, etc. (collectively, the “**Boat Show Activities**”). By the acceptance of a license, lease, deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Property, each such grantee, occupant and user automatically acknowledges, stipulates, and agrees that the Boat Show Activities during the Show Dates as provided in the Boat Show Lease and Master Lessee’s right to conduct Special Functions and other events and activities including the Boat Show (including providing access to the Property to its invitees, contractors, agents, employees, etc.) as permitted by applicable law (and not otherwise restricted by restrictive agreements applicable to such portion of the Property), and such parties (x) will not restrict or interfere the right to use portions of the Shared Facilities during Special Functions (including, but not limited to, the Boat Show) as determined by Master Lessee (or its assigns), (y) agree such uses shall not be deemed nuisances, noxious or offensive activities under any applicable covenants or at law generally, and (z) LESSEE and all those claiming by through or under the LESSEE including but not limited to Unit Owners and their guests, invitees, and occupants are estopped from objecting to such activity to the extent such Boat Show Activities are permitted under the Boat Show Lease. LESSEE acknowledges and agrees that it is taking the Property, subject to the rights of the Boat Show Tenant to operate the Boat Show as provided in the Boat Show Lease to the extent permitted under the Boat Show Lease.

The Regime Documents shall reflect that (i) the Boat Show will be conducted within the Bahia Mar Complex (including portions of the Property), (ii) the operations of the Boat Show will have an impact on the Property, and (iii) a portion of the parking located within the parking spaces made available to Commercial Units and other portions of the Property may be set aside to be utilized in connection with the Boat Show. The disruption caused by the Boat Show includes both the setup period prior to the actual Boat Show, the dates during the Boat Show, and the take-down period after each Boat Show, and the Regime Documents shall reflect that such disruption is consented to by the Association and the Unit Owners and they are estopped from objecting to such use as permitted under the Boat Show Lease.

The provisions of this Article 31 or any other right of the Boat Show Tenant under this Lease shall terminate upon any termination of the Boat Show Lease or any termination of the Boat Show Tenant’s rights of possession under the Boat Show Lease.

**ARTICLE 32**  
**MISCELLANEOUS PROVISIONS**

Section 32.1 **Governing Law. This** Lease shall be interpreted and governed by and construed in accordance with the laws of or applicable to the State of Florida. Broward County, Florida is the agreed upon venue.

Section 32.2 **Master Declaration. LESSOR and Master Lessee have entered into** **a** Declaration of Covenants, Restrictions and Easement for Bahia Mar Complex recorded in Official Records Book \_\_\_\_ Page \_\_\_\_\_ of the Public Records of Broward County, Florida as

may be amended from time to time (the “**Master Declaration**”) which Master Declaration is a covenant running with the land and a Permitted Exception.

LESSOR agrees that it shall timely execute such easements as may be reasonably required by LESSEE. In addition to other easements that will be required, the Parties recognize that various utility companies will require easements to be given to such utility companies in connection with the redevelopment of the Bahia Mar Complex as contemplated under the Site Plan.

Section 32.3 RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

Section 32.4 Force Majeure Event. For the purpose of any of the provisions of this Lease, neither LESSOR nor LESSEE, as the case may be, shall be considered in breach of or in default in any of its obligations under this Lease in the event of any Force Majeure Event; it being the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure Event, the time or times for the performance of the covenants and provisions of LESSEE of this Lease shall be excused and extended for the period of such delay. Except as otherwise set forth in this Lease, this provision shall not apply to payment of Rent, taxes, insurance and other monetary obligations.

Section 32.5 Assignability and Binding Effect. Subject to all provisions respecting the rights of assignment and subleasing, this Lease shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto.

Section 32.6 Amendments. LESSOR and LESSEE by mutual agreement shall have the right but not the obligation to amend this Lease. Such amendments shall be effective only when signed by LESSOR and LESSEE, and approved by the City Commission of the City of Fort Lauderdale, and shall thereafter be incorporated as a part of this Lease.

Section 32.7 Waiver of Jury Trial. The parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Lease, or arising out of, under or in connection with this Lease or any amendment or modification of this Lease, or any other agreement executed by and between the parties in connection with this Lease, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for LESSOR and LESSEE entering into this Lease.

Section 32.8 Severability. If any provision of this Lease, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, then, to the extent possible, and provided that none of the substantive rights, obligations or liabilities of any party are altered, the remainder of this Lease shall be construed as if such invalid part were never included herein and this Lease shall be and remain valid and enforceable to the fullest extent permitted by law. If, however, the clause determined to be invalid materially affects the performance of the parties, or

materially impacts the parties' expectations or positions with respect to this Lease, the parties will negotiate in good faith and modify this Lease in some fashion so as to, as near as possible, place the parties in the same position they were in, viz-a-vie, their intent, performance expectations, and economic position.

Section 32.9 Captions; Exhibits. The captions contained in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or prescribe the scope of this Lease or the intent of any provisions thereof. All exhibits attached to this Lease and referenced herein are incorporated herein as if fully set forth in this Lease.

Section 32.10 Recording. The Memorandum of this Lease shall be recorded in the Public Records of Broward County, Florida, at the expense of LESSEE.

Section 32.11 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 32.12 Approvals and Consents. Wherever in this Lease the approval or consent of any Party (including LESSOR'S City Manager or other Authorized Representative) is required, it is understood and agreed that unless specifically stated to the contrary, such approval or consent shall be granted or withheld in LESSOR's or City Manager's (as applicable) reasonable discretion, within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except as may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the City Manager in the discretion of the City Manager acting reasonably:

- (i) The exercise of LESSOR's rights of entry and inspection;
- (ii) The exercise of LESSOR's right or obligation to execute a joinder in applications for land development approvals or other governmental approvals (including permits) which are necessary for LESSEE to obtain from governmental authorities, and where such applications require evidence of the consent of the property owner;
- (iii) The exercise of LESSOR's right to receive and approve or not approve and specify the basis for such disapproval the form of Certificates of Insurance, policies, limits, and coverages of insurance, bonds, and Environmental Assessments;
- (iv) The exercise of LESSOR's right or obligation to approve the Legal Description and Revised Legal Descriptions as contemplated pursuant to the terms of this Lease;
- (v) The execution of Estoppel Statements (or any modifications of the terms thereof) to be given by LESSOR under this Lease;
- (vi) The approval of the Regime Documents;
- (vii) The approval, if required, of any Subleases (if such subleased premises is less than 3,000 square feet), Sub-Subleases (if such sub-subleased premises is less than 3,000 square feet), or any material modification of the terms thereof; and

(viii) Other provisions of this Lease where the act, approval or consent of the City Manager is expressly authorized.

Except as may be otherwise specifically provided for in this Lease, including those matters specifically listed above, all other decisions of LESSOR not listed above, or as may be identified elsewhere herein as being made by the City Commission, shall be made by the City Commission.

The City Manager or LESSOR shall, where the City Manager's or LESSOR's approval or consent is to be given on behalf of LESSOR, approve, approve with stated conditions, or disapprove (and specify with specificity the basis for such stated conditions or disapproval) within thirty (30) days of the City Manager's or LESSOR's receipt of a written request or such consent shall be deemed given. In the event that LESSOR or City Manager fail to provide such consent or denial within such 30-day period, LESSEE shall deliver written notice to LESSOR advising LESSOR that LESSOR or City Manager as applicable has not responded to LESSEE within the required 30-day period and LESSOR or City Manager as applicable, shall have an additional ten (10) days thereafter to respond to LESSEE with such approval or disapproval. LESSOR's or City Manager's, as applicable, failure to respond after the expiration of the additional 10-day period shall be deemed an approval.

Section 32.13 Exercise of LESSOR or City Manager Acts as Fee Owner. The LESSEE acknowledges that when LESSOR or City Manager acts or exercises any rights or obligations under this Lease, including without limitation the specific approval and consent rights of LESSOR or City Manager set forth herein, it is doing so in its capacity as the fee owner and LESSOR of the Premises and not in the exercise of its municipal regulatory authority, and that the role of LESSOR as a municipality (including its regulatory and sovereign powers) is separate and distinct from the role of LESSOR as the fee owner and LESSOR of the Property under this Lease.

Section 32.14 Exculpation. It is the intent and agreement of the Parties hereto that only the parties as entities shall be responsible in any way for their respective obligations hereunder. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the Parties to this Lease shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Lease, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other applicable law are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 32.15 Attorneys' Fees. In the event of any dispute or litigation between the Parties arising under this Lease, the non-prevailing Party shall be responsible for all costs and expenses of the prevailing Party, including reasonable attorneys' fees and court costs, through all trial and appellate levels.

Section 32.16 Construction and Interpretation. Each of the Parties hereto and their counsel have reviewed and revised, or requested revisions to, this Lease, and the usual rule of

construction that any ambiguities are to be resolved against the drafting Party shall be inapplicable in the construction and interpretation of this Lease and any amendments or exhibits to this Lease.

Section 32.17 Third Party Beneficiaries. Neither LESSEE nor LESSOR intend to directly or substantially benefit a third-party by this Lease, other than the Unit Owners, Sublessee(s), Sub-Sublessee(s) and Leasehold Mortgagee(s) to the limited extent expressly stated herein or in any Non-Disturbance Agreement executed by LESSOR and subject to the conditions stated therein. Therefore, the Parties agree that there are no other third-party beneficiaries to this Lease and that no other third party shall be entitled to assert a claim against either Party based upon this Lease, other than such Sublessee(s), Sub-Sublessee(s) and Leasehold Mortgagee(s) to the limited extent expressly stated herein or in any Non-Disturbance Agreement executed by LESSOR and subject to the conditions stated herein.

Section 32.18 Estoppel Statement. The Parties agree that not more than three (3) times a year, upon not less than thirty(30) days prior request by a Party hereto, the other Party will deliver a statement in writing ("**Estoppel Statements**") certifying: (a) whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) to the best of the actual knowledge of the signor, whether any facts are known that either Party is in default and, if none, that no facts are known which would cause a Party to be in default under the provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either Party may reasonably request.

Additionally, upon the request of LESSOR or LESSEE to the other, LESSOR and LESSEE shall execute and deliver to each other a certificate confirming the Commencement Date, the Start Date, the Completion Date, the Term (and any extensions) and the date of Promenade Completion and other operative dates in this Lease.

Section 32.19 Prior Agreements. This Lease incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with the provisions of this Lease.

Section 32.20 Further Assurances. Each Party will promptly cooperate each with the other and will execute and deliver any and all written further assurances and/or documents that are reasonably necessary, convenient, or desirable to evidence, complete or perfect (or any combination thereof) the transactions contemplated by this Lease, so long as no further assurance or document to be executed operates to impose any new or additional obligation or liability upon any party. The Parties will so perform all other acts that are reasonably necessary, convenient, or desirable for any such purpose, so long as no new or additional obligations or liabilities are incurred as a result thereof.

Section 32.21 LESSEE'S Acceptance of Property. LESSEE acknowledges that the Original Lease and the preceding leases for the Property have resulted in LESSOR being out of possession and operation of the Property since the initial date of the Original Lease. As of the date of the Original Lease, except as set forth in this Section 32.21, LESSOR has made no warranty or representation as to the physical condition of the Premises or the current improvements thereon, and the LESSEE is accepting such physical condition as of the Commencement Date "AS" and "WITH ALL FAULTS", other than for changes after such date caused by LESSOR which is not either approved in writing by the LESSEE in its sole discretion or permitted to be made by LESSOR pursuant to this Lease. The Parties have agreed that LESSOR has made no warranties or representations as to whether or the extent to which Hazardous Substances may exist on the Premises (other than LESSOR has no actual knowledge of any violation of Hazardous Substances Laws except for those matters set forth in that certain Estoppel Letter dated April 30<sup>th</sup>, 2014), and the LESSEE has assumed all responsibility for Hazardous Substances which exist on the Property as of the Commencement Date (other than the oil spill previously disclosed in writing to LESSOR prior to the Commencement Date).

**ARTICLE 33**  
**CITY GOVERNMENT**

Section 33.1 Notwithstanding anything to the contrary in this Lease, the making of this Lease does not constitute an abrogation of LESSOR'S governmental police or land development regulatory powers, and the LESSEE's obligations to comply with applicable law include the LESSEE complying with all development approvals required by LESSOR in its capacity as a governmental authority.

Section 33.2 Neither this Lease, nor any of its provisions, shall prevent the City from enacting or seeking to enforce any rule, regulation, Ordinance or Charter provision which may affect the Property, its uses, the Proposed Improvements, or the Improvements, regardless of whether such local law is the result of action by the City Commission, or by initiative (petition) and referendum, or by such other means as may be allowed in the future, provided same is of general application to property in the City and is not discriminatorily applied against the LESSEE or the Property.

Section 33.3 Whenever the City seeks to enforce any existing or future local municipal law, neither the provisions of subsections 33.1 or 33.2 shall waive or affect the LESSEE's ability to (i) contest the validity or application of such acts; (ii) seek whatever constitutional, statutory, or equitable remedies as may be available to the LESSEE; (iii) to assert whatever defenses or avoidances as may be available to the LESSEE; or (iv) seek judicial or administrative review as may be available.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

**WITNESSES:**

\_\_\_\_\_

[Witness type/print name]

\_\_\_\_\_

[Witness type/print name]

**LESSOR:**

**CITY OF FORT LAUDERDALE**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

Approved as to form:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

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

\_\_\_\_\_  
Commission Number

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

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

Commission Number:

**WITNESSES:**

**LESSEE:**

\_\_\_\_\_

Witness type/print name]

\_\_\_\_\_

Witness type/print name]

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

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

STATE OF FLORIDA  
COUNTY OF BROWARD

I HEREBY CERTIFY that on this day, before me by means of  physical presence or  online notarization this \_\_\_\_\_, 20\_\_, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, freely and voluntarily under authority duly vested in him/her by said company. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

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

Commission Number:

The undersigned joins in this Lease to agree that the Property is no longer a portion of the Premises demised under the Master Lease.

**WITNESSES:**

**RAHN BAHIA MAR L.L.C.**, a Delaware limited liability company

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
[Witness type/print name]

\_\_\_\_\_

\_\_\_\_\_  
[Witness type/print name]

STATE OF FLORIDA  
COUNTY OF BROWARD:

I HEREBY CERTIFY that on this day, before me by means of  physical presence or  online notarization this \_\_\_\_\_, 20\_\_, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, by \_\_\_\_\_, the \_\_\_\_\_ of RAHN BAHIA MAR L.L.C., a Delaware limited liability company, freely and voluntarily under authority duly vested in him/her by said company. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_

Notary Public, State of Florida  
(Signature of Notary taking Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

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

Commission Number: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT A-1**

**OVERHANG PROPERTY**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT B**  
**PREMISES**  
**BAHIA MAR COMPLEX**

All that part of BAHIA MAR, according to the plat thereof recorded in Plat Book 35, page 39 of the public records of Broward County, Florida, lying West of the West right of way line of Seabreeze Boulevard, excepting therefrom Parcel No. 1 and also excepting the North 80 feet of Parcel No. 34.

---

**EXHIBIT C**

**MEMORANDUM**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT D-1**

**SUBLEASEHOLD NON-DISTURBANCE AGREEMENT**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT D-2**

**SUB-SUBLEASEHOLD NON-DISTURBANCE AGREEMENT**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT E-1**

**LEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT E-2**

**SUBLEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT E-3**

**SUB-SUBLEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT F**

**PROMENADE**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT G**

**SITE PLAN**

[Site Plan in effect at time of signing]

**EXHIBIT H**

**HAZARDOUS SUBSTANCES**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT I**

**PETROLEUM LIABILITY AND RESTORATION INSURANCE PROGRAM**  
**COVERAGE FOR THIRD PARTY LIABILITY**  
**FOR CONTAMINATION**



**ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.**  
199 Water Street, 24<sup>th</sup> Floor, New York, NY 10038 • Tel. (646) 794-0500 • Fax (646) 794-0611

**SCHEDULED LOCATION POLLUTION LEGAL LIABILITY POLICY  
DECLARATIONS**

Florida Hurricane Catastrophe Fund Surcharge (1.3% of Total Florida Premium) \$1,224.02  
(Amount due in addition to Premium shown in Item 6 below)

Policy Number: 0309-0737                      New/Renewal of: New

**Item 1. Named Insured and Address:**

Rahn Bahia Mar L.L.C.  
1175 NE 125<sup>th</sup> Street, Suite 102  
Miami, FL 33161

**Item 2. Policy Period:**                      From June 27, 2014    To June 27, 2021  
12:01 AM STANDARD TIME AT THE ADDRESS SHOWN IN ITEM 1.

**Item 3. Coverages and Coverage Section Limits and Deductibles:**

This Policy covers only those Coverages stated below:

Coverage	Deductible Each Incident	Each Incident Limit	Coverage Section Aggregate Limit
1. Pre-Existing Conditions	\$100,000	\$10,000,000	\$10,000,000
2. New Conditions	\$100,000	\$10,000,000	\$10,000,000
3. Blanket Non- Owned Site	\$100,000	\$10,000,000	\$10,000,000
4. Blanket Transportation	\$100,000	\$10,000,000	\$10,000,000
Coverage	Business Interruption- Deductible - Days	Each Incident Limit	Coverage Section Aggregate Limit
5. Business Interruption	5	\$10,000,000	\$10,000,000

**Item 4. Policy Aggregate Limit:**                      \$10,000,000

ENV-SPL 00001 00 (02/12)                      Page 1 of 2  
Includes copyrighted material of Insurance Services Offices, Inc. with its permission.

**Item 5. Insured Locations:**

801 Seabreeze Boulevard, Fort Lauderdale, FL

**Item 6. Policy Premium:** \$94,155

**Item 7. Retroactive Date:** 06/27/2014

**Item 8. Notice of Pollution Incident or Claim:**

ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.  
ATTN: ENVIRONMENTAL CLAIMS DEPT.  
199 WATER STREET, 24<sup>TH</sup> FLOOR  
NEW YORK, NY 10038  
[EnvCasClaims@awac.com](mailto:EnvCasClaims@awac.com)

**All Other Notices:**

ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.  
ATTN: ENVIRONMENTAL CASUALTY  
199 WATER STREET, 24<sup>TH</sup> FLOOR  
NEW YORK, NY 10038

**Item 9. Broker:**

Lockton Companies LLC  
3601 SW 160<sup>TH</sup> Ave., Suite 200  
Miramar, FL 33027

IN WITNESS WHEREOF, the Insurer has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by one of our duly authorized representatives, where required by law.



President



Asst. Secretary



**AUTHORIZED REPRESENTATIVE**

Policy Number: 0309-0737

Named Insured: Rahn Bahia Mar L.L.C.  
Effective Date: June 27, 2014  
12:01 A.M., Standard Time

**SCHEDULE OF FORMS AND ENDORSEMENT**

The following forms and endorsements are made a part of this policy:

<b><u>Endorsement Number</u></b>	<b><u>Form #/ Edition</u></b>	<b><u>Title</u></b>
	ENV-SPL 00001 00 (02/12)	Scheduled Location Pollution Legal Liability Policy Declarations
1	ENV-IL 00006 09 (04/11)	Florida Hurricane Catastrophe Fund Surcharge
2	ENV-SPL 00005 00 (12/11)	Strategic Response Coverage Extension
3	ENV-SPL 00020 00 (05/10)	Disclosed Document(s) Schedule
4	ENV-SPL 00027 00 (05/10)	Notice of Possible Claim Deletion
5	ENV-SPL 00044 00 (05/10)	Additional Named Insured(s)
6	ENV-SPL 00046 00 (10/10)	Amendment of Definition of Bodily Injury to Include Medical Monitoring Costs
7	ENV-SPL 00047 00 (10/10)	Amendment of Definition of Pollution Incident to Include Illicit Abandonment
8	ENV-SPL 00060 00 (10/10)	Asbestos and Lead Exclusion Amendment Clean-Up Costs Coverage for Inadvertent Disturbances
9	ENV-SPL 00082 00 (09/12)	Self-Insured Retention
10	ENV-SPL 00088 00 (10/12)	Amendment of Non-Owned Disposal Site Coverage – Waste Originating From Insured Location
11	ENV-SPL 00091 00 (10/12)	Amendment of Transportation Coverage – Transportation From an Insured Location
12	RB Manu A	Amendment of Other Insurance Condition
13	RB Manu B	Storage Tank Endorsement to Demonstrate Financial Responsibility
14	RB Manu C	Coverage Territory Amendatory Endorsement
15	RB Manu D	Amendment of Cancellation Condition – Extended Notice, Attempt to Cure and 100% Earned at Policy Inception
16	RB Manu E	Mortgagee Insured/ Assignment
17	RB Manu F	Schedule of Underground Storage Tank(s) With Retroactive Date
18	RB Manu G	Amendment of Changes Condition
19	RB Manu H	Mortgagee Insured / Promotion to Named Insured

20	RB Manu I	Material Change in Use – Intended Use
	ENV-SPL 00003 00 (02/12)	Scheduled Location Pollution Liability Policy

---

**EXHIBIT J-1**

**SUBLEASE FORM**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

**EXHIBIT J-2**  
**SUB-SUBLEASE FORM**

The LESSEE shall provide this Exhibit to the LESSOR for its review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.