

## COMPREHENSIVE AGREEMENT

This Comprehensive Agreement ("Comprehensive Agreement") is entered into this 24 day of October, 2023 by and between the **CITY OF FORT LAUDERDALE, FLORIDA**, a Florida municipal corporation (the "CITY") and **HALL OF FAME PARTNERS, LLC**, a Florida limited liability company, and its successors and assigns ("HOFP"), pursuant to Section 255.065(7), Florida Statutes:

### RECITALS

WHEREAS the CITY supervises and manages the Property described in Exhibit 1, pursuant to that certain Dedication from the Trustees of the Internal Improvement Trust Fund of the State of Florida, as recorded in Official Records Book 2611, Page 315, of the Public Records of Broward County, Florida (the "Dedication"); and

WHEREAS, the Dedication dedicates the Property for use for public municipal purposes only, subject to certain specified provisions; and

WHEREAS, the CITY has been in possession of the Property since April 23, 1963; and

WHEREAS, the Property is subject to that certain lease by and between ISHOF (defined hereinbelow) and the CITY dated August 21, 2018, (the "Existing ISHOF Lease"); and

WHEREAS, the Existing ISHOF Lease will be either renegotiated or terminated in connection with ISHOF's sub sub-leasing of the facilities in accordance with the terms of this Comprehensive Agreement; and

WHEREAS, on September 14, 2020, the CITY received an unsolicited proposal from HOFP pursuant to Section 255.065(3), Florida Statutes (the "Proposal") to demolish existing buildings, develop the Property, and design and build facilities to address the need for replacement of the East and West Buildings at the Fort Lauderdale Aquatic Center peninsula; and

WHEREAS, pursuant to Resolution No. 21 the City Commission, at its meeting on January 21, 2021, determined that the proposed Project submitted by HOFP serves a public purpose as recreational, sporting, and educational facilities which will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes, declared its intent to enter into a comprehensive agreement for the Project, and established a period of twenty-one days after the initial date of publication in which to accept other proposals; and

WHEREAS, after the January 21, 2021 regular City Commission meeting, the CITY publicly advertised the Proposal and requested alternate proposals from January 27, 2021 through February 17, 2021, and did not receive alternate proposals by February 27, 2021, a period of Twenty-One (21) days in accordance with Section 255.065(5)(c), Florida Statutes, the CITY was authorized to commence negotiations for a Comprehensive Agreement with HOFP for the proposed qualifying project; and

WHEREAS, in accordance with Section 255.065(6), Florida Statutes, the CITY and HOFPP entered into an Interim Agreement dated December 13, 2021, in connection with the negotiation of a Comprehensive Agreement, for purposes of authorizing HOFPP to commence activities for which it can be compensated related to the proposed qualifying project, including but not limited to, project planning and development, design, environmental analysis and mitigation, survey, obtaining leasing commitments, and other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities, as well as purposes related to an aspect of the development or operation of a qualifying project that the CITY and HOFPP deemed appropriate; and

WHEREAS, the conditions precedent to entering into this Comprehensive Agreement, including but not limited to Section 3.8 of the Interim Agreement, whereby HOFPP shall obtain letters of intent from prospective ISHOF Lessees representing fifty percent (50%) of the projected yearly total revenue in order to move on to the Comprehensive Agreement, the terms and conditions of the Interim Agreement have been satisfied; ; and

WHEREAS, any remaining terms and conditions under the Interim Agreement, including but not limited to the demolition of the East Building have been merged into and shall be a part of this Comprehensive Agreement such that this Comprehensive Agreement shall supersede said Interim Agreement; and

WHEREAS, the CITY has requested and HOFPP has agreed to HOFPP's adding the following additional construction to the proposed qualifying project: (i) the construction of a separate building for the ocean rescue operations; (ii) the construction of a public dock facility which may also be used by various water taxi services; (iii) the construction of the promenade and (iv) the refurbishment and repair of the sea wall at the Fort Lauderdale Aquatic Center peninsula; and

WHEREAS, in accordance with this Comprehensive Agreement, HOFPP shall perform the duties, obligations and responsibilities to manage the overall development and operation of the Property and commence undertaking the activities described in Articles III and IV below, and further outlined in this Comprehensive Agreement as needed for the development of the Property in accordance with, and to the extent permitted by Section 255.065(7), Florida Statutes; and

WHEREAS, at its regular meeting of September 19, 2023, the City Commission approved the Qualified Project and this Comprehensive Agreement in accordance with Section 255.065(5)(c), Florida Statutes; and

WHEREAS, the CITY and HOFPP desire to enter into this Comprehensive Agreement to supersede and replace all agreements now existing between them, both oral and written, effective as of the Effective Date.

## **COVENANTS**

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the CITY and HOFP agree as follows:

### **ARTICLE I**

#### **DEFINITIONS / EXHIBITS**

**Section 1.01. Agreement and Exhibits.** The Recitals and Exhibits 1 through 18 are parts of this Comprehensive Agreement are attached hereto and are hereby incorporated herein by this reference. The true and correct copies of all of the Exhibits referenced in this Comprehensive Agreement are hereby approved in substantially the form attached to this Comprehensive Agreement and are as follows:

Exhibit 1	Property Legal Description
Exhibit 2	Draft Development Budget
Exhibit 3	Draft Development Schedule
Exhibit 4	ISHOF Relocation Site
Exhibit 5	Intentionally Omitted
Exhibit 6	Leasing Plan
Exhibit 7	Draft Ground Lease
Exhibit 8	Draft Master Facilities Lease
Exhibit 9	Intentionally Omitted
Exhibit 10	Form Design-Build Construction Agreement
Exhibit 11	Design-Builder Insurance
Exhibit 12	Construction Plans (30% Complete)
Exhibit 13	Environmental Report
Exhibit 14	Draft Facilities Manager's Contract
Exhibit 15	Intentionally Omitted
Exhibit 16	Trip Generation Statement
Exhibit 17	Dedication

Exhibit 18 E-Verify Affidavit

**Section 1.02. Definitions.**

(a) “Agreement” or “Comprehensive Agreement” means this Comprehensive Agreement between HOFPP and the CITY entered into in accordance with the provisions of Section 255.065(7), Florida Statutes, including all amendments, exhibits, addenda, and attachments attached hereto and made part of this Comprehensive Agreement upon its execution.

(b) “Aquatic Center Improvements” means the dive pool, competition pool, training pool, locker rooms, entry ticketing building and grandstand building which comprise the CITY owed aquatic improvements located adjacent to, but are separate and not part of, the Qualified Project, inclusive of Project nos. P12315 and P12582.

(c) “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

(d) “Capital Group Realty” means Capital Group Realty of Delray Beach, LLC, a Florida limited liability doing business as Capital Group Realty of South Florida.

(e) “Day” means calendar day.

(f) “Design-Builder” means Hensel Phelps Construction Co., a Delaware general partnership.

(g) “Design-Build Construction Agreement” means the Agreement between HOFPP and the Design-Builder to design and construct each phase of the ISHOF Improvements, a form of the general Design-Build Construction Agreement to be used during the term of this Comprehensive Agreement is attached hereto as Exhibit 10.

(h) “Date of Commencement” is as provided for in Article II, Section 2.02 hereof.

(i) “Environmental Report” shall mean that certain Environmental Site Assessment performed by Terracon dated April 12, 2022, and attached hereto as Exhibit 13.

(j) “Facilities Manager” means initially Hensel Phelps Services LLC, a Delaware limited liability company, or any other qualified entity that may be hired to manage and maintain the facilities in accordance with this Comprehensive Agreement to be hired by HOFPP.

(k) “Financing Plan” shall mean the complete plan of all sources for the financing of the Project and all costs and expenses associated with such sources, including all rates and fees and the allocation of the financial responsibilities as to the respective parties.

(l) “Fort Lauderdale Aquatic Center peninsula” means the parcel of land legally described as Parcel “A” of the plat known as the “International Swimming Hall of Fame Complex” as recorded in the plat book 138 and page 19.

(m) “Hazardous Materials” are defined in Section 7.05(a)(ii).

(n) “Interim Agreement” means the Interim Agreement between HOFP and the CITY entered into on December 13, 2021, in accordance with the provisions of Section 255.065(6), Florida Statutes.

(o) “ISHOF” means the International Swimming Hall of Fame Inc., a Florida not for profit corporation.

(p) “ISHOF Improvements” are the ocean rescue building, repair and refurbishment of the sea wall, the public dock facility, a promenade and the East and West buildings, at the Fort Lauderdale Aquatic Center peninsula as same are constructed in various phases in accordance with the schedule (“Phase Schedule”) attached and made a part of the Design-Build Construction Agreement.

(q) “MACQ” means MACQ-Florida II, LLC, a Delaware limited liability company, which entity that HOFP will be using to finance the Project.

(r) “Maintenance” shall mean all ordinary day-to-day general maintenance (including all labor, supplies, materials and equipment) reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures, equipment or furniture within the Property Site in order to preserve such items in their existing condition, ordinary wear and tear excepted. By way of illustration, and without limiting the generality of the foregoing, Maintenance shall include: (a) preventive or periodic maintenance procedures for equipment, fixtures or systems; (b) periodic testing of building systems; (c) regular trash removal from building(s); (d) regular maintenance procedures for HVAC, plumbing, mechanical, electrical and structural systems, such as periodic cleaning, lubrication, and changing of air filters; (e) touch-up painting; and (f) any other work of a routine, regular and generally predictable nature that is reasonably necessary in order to keep the Property Site in good order and condition. Maintenance shall not include any work defined as a Repair.

(s) “Property” or “Property Site” shall mean the real property supervised and managed by CITY and located at 501 Seabreeze Blvd, Fort Lauderdale, FL 33316 and described as Fort Lauderdale Aquatic Complex located in the City of Fort Lauderdale, Florida, commonly known as the site of The Aquatic Center, less and except the Aquatic Center Improvements and land upon which said Aquatic Center Improvements are located and which is more particularly legally described in Exhibit 1 attached hereto and incorporated herein.

(t) “Qualified Project” or “Project,” means the abatement and demolishing of certain existing facilities located on the Property and the design, development, construction and equipping of an ocean rescue building, refurbishment and repair of the sea wall, a public dock facility, a promenade and the East and West Buildings, to be fully designed and built in various phases and to be located at the Fort Lauderdale Aquatic Center peninsula more particularly described in Section 3.01, for which HOFP, Design-Builder, and Capital Group Realty are to perform the work under this Comprehensive Agreement.

(u) “Repair” means restoration work for when something gets broken, damaged or stops working. Repairs performed outside of warranty are capital expenses.

## ARTICLE II

### TERM / OPTIONS TO RENEW

**Section 2.01. Effective Date.** This Comprehensive Agreement shall be effective and binding upon CITY and HOFP beginning on the date it is signed by both parties (the "Effective Date").

**Section 2.02. Commencement Date.** The Commencement Date of this Comprehensive Agreement shall be the date HOFP closes on the loan with HOFP's lender to finance the initial phase of the Project ("Financial Close"). The Commencement Date shall be no greater than two (2) years from the Effective Date.

**Section 2.03. Initial Term.** The "Initial Term" of this Comprehensive Agreement shall commence on the Commencement Date and will expire thirty (30) years after the date of the Final CO as to the last structure being constructed in the last phase of the Project, provided however, subject to Force Majeure Events, said Initial Term shall expire no later than thirty five (35) years from the Commencement Date of this Comprehensive Agreement. For purposes of this Section 2.03, "Final CO" shall mean the final certificate of occupancy issued by the City on the entire building structure to be completed in the last phase of the Project as set forth in the phase schedule attached to the Design Build Construction Agreement for that respective Design Build Construction Agreement.

**Section 2.04. Renewal Term.** For purposes of this Comprehensive Agreement, a "Renewal Term" means a term of six (6) years commencing upon the expiration of the Initial Term or the immediately preceding Renewal Term, if any. HOFP may request that the City approve a renewal of this Comprehensive Agreement for a maximum of three (3) Renewal Terms by providing the City a written request therefore at least one hundred eighty (180) Days prior to the expiration of the Initial Term or any Renewal Term. In the event HOFP provides a timely written request to renew this Comprehensive Agreement, the Parties shall commence negotiation of the terms and conditions applicable to any Renewal Term. The City may approve or disapprove any request to renew this Comprehensive Agreement in its reasonable discretion. For purposes of this Comprehensive Agreement, the Initial Term and any Renewal Term may be referred to collectively as the "Term."

## ARTICLE III

### CONSTRUCTION, CAPITAL IMPROVEMENTS, MAINTENANCE

**Section 3.01. Description of the Qualified Project.** CITY, recognizing the critical importance of the time constraints inherent with the Qualified Project, authorizes HOFP to design, develop and construct the Qualified Project in phases as more particularly set forth in the Phase Schedule on a "turn-key" basis. HOFP will manage the overall development and operation of the Property and commence undertaking the activities described in this Comprehensive Agreement. The parties agree that each phase of the Qualified Project will be designed, constructed, developed and completed by HOFP on the Property in a workmanlike manner, and as

provided in this Comprehensive Agreement. HOFPP shall not be responsible for any “off-site” improvements necessary to serve the Qualified Project, except such “off-site” improvements as are required as a result of the development process and the temporary relocation of the ISHOF as set forth in 5.02(c) hereinbelow. HOFPP has, in consultation with CITY and in accordance with all applicable laws, codes, and ordinances, selected the services of the Qualified Project design and construction team, including but not limited to the consultants, professionals, architects, engineering services, surveyors and landscape architects necessary to design and construct each phase of the Qualified Project and define each phase’s elements in detail sufficient for each phase of the Qualified Project’s purposes and to fulfill each phase of the Qualified Project’s construction requirements. To facilitate the expeditious completion of each phase of the Qualified Project, CITY shall use its best efforts to process all permits and necessary applications associated with each phase promptly. HOFPP may engage outside consultants on CITY’s approved list of outside consultants in order to expedite the review process for each phase. The Phase Schedule for the Qualified Project must be approved by HOFPP and CITY by no later than the execution of this Comprehensive Agreement. During the term of this Comprehensive Agreement, HOFPP shall submit the design of each particular phase of the Qualified Project together with the Development Budget for that particular phase, including the temporary site for the relocation of the ISHOF, to the City Manager or their designee for review at such time that a particular phase to be constructed is at the point where a minimum of thirty percent (30%) of the design for that particular phase is complete and prior to commencement of the design review process for each phase. CITY shall have a period of forty-five (45) Days from HOFPP’s delivery of the design and Development Budget documentation to the City to review and comment on the project design and design documents submitted in accordance with the terms of this Comprehensive Agreement, including without limitation Section 13.17 set forth hereinbelow. In the event the CITY does not provide its response within said forty-five (45) day period, said design and design documents for that particular phase being reviewed and commented on, including the phase as to the relocation of the ISHOF shall be deemed to be approved. Additionally, once the CITY has approved the design and budget of a particular phase the Qualified Project, including the relocation of ISHOF, any changes requested by the CITY as to such phase shall require a change order. Once the project design and design documents have been approved pursuant to this Section 3.01, the design and design documents for such particular phase shall be referred to as the “Approved Plans and Specifications” for such phase and HOFPP will continue with the permitting process with the various CITY departments.

**Section 3.02. Management of the Qualified Project Construction.** HOFPP shall manage and oversee the construction of each phase of the Qualified Project.

(a) In accordance with Section 255.065(5)(b)(1) and (7)(a)(1), Florida Statutes, for each phase of construction, HOFPP will (i) provide CITY with a guarantee by HOFPP, of the performance of its obligations under this Comprehensive Agreement and the payment of all subcontractors and (ii) cause its Design-Builder to provide CITY with public performance and payment bonds in the amount equal its contract price which bond(s) shall meet the requirements of Section 255.05, Florida Statutes. Such bond(s) shall be written by a surety licensed to do business in the State of Florida and otherwise acceptable to CITY; provided, however, that the surety shall be rated as “A-1” or better as to general policy holders rating as reported in the most

current Best Key Rating Guide, published by A.M. Best Company, Inc. Such bond(s) shall be recorded in the Public Records of Broward County, Florida by said Design-Builder prior to the commencement of any construction work on any phase of the Qualified Project.

(b) HOFB will plan, organize, supervise, monitor, direct, and control the work on each phase of the Qualified Project to ensure that it is done in accordance with the Design-Build Construction Agreement and Approved Plans and Specifications and Development Budget as to such phase.

(c) HOFB will prepare a Development Budget in accordance with the Design-Build Construction Agreement, for each phase of construction, and this Comprehensive Agreement. A copy of each phase Development Budget ("Phase Development Budget") will be provided to the City upon the submission of said Design Build Construction Agreement for each particular phase. A copy of the draft Phase Development Budget for the first phase of the Qualified Project is attached to this Comprehensive Agreement as Exhibit 2 (the "Draft Initial Phase Development Budget"). In the event there are any approved change orders which cause an increase in the overall development costs as to any phase, HOFB shall have the right to increase said Development Budget for that phase being constructed.

(d) HOFB shall prepare a Development Schedule in accordance with each Design-Build Construction Agreement for a particular phase ("Phase Development Schedule"), the Phase Development Budget and this Comprehensive Agreement. A copy of the Phase Development Schedule will be provided to the City upon the submission of said Design Build Construction Agreement for each particular phase. The draft Phase Development Schedule for the first phase of the Qualified Project is attached hereto and incorporated herein as Exhibit 3 (the "Draft First Phase Development Schedule").

(e) HOFB shall consult and coordinate with the City's Parks and Recreation Department with respect to the scheduling and performance of all construction activities on the Qualified Project and use its best efforts to mitigate operational impacts to the CITY's programming, provided however, the City's Parks and Recreation Department cannot interfere with, stop or disrupt the scheduling and performance of any construction activities.

(f) During the construction of the Qualified Project, the CITY shall designate a representative to attend the monthly construction meetings to be held with HOFB, MACQ and the CITY.

(g) During the construction of the Qualified Project, the CITY shall have the right to hire its auditors for purposes of auditing the construction costs. HOFB shall allocate the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000) in the construction budget to pay for such audits ("Construction Audit Budget"). Any audit costs over and above the Construction Audit Budget shall be the sole costs and expense of the CITY. Additionally, the CITY shall have the right to review the MACQ records of the construction draws as well as MACQ's engineering firm's monthly construction progress review documents.



**Section 3.03. Construction Requirements.** Subject to the terms and conditions of this Comprehensive Agreement, HOFP will hire Design-Builder who in performing the design and construction of the ISHOF Improvements for each phase of the Qualified Project shall:

(a) Exercise good faith commercially reasonable efforts to, subject to Force Majeure events, complete the design and construction of the ISHOF Improvements of the Qualified Project in accordance with the final plans and specifications, in a safe, good, and workmanlike manner within the times established in the Development Schedule;

(b) Provide project designs to CITY for regulatory approval, which regulatory approval will not be unreasonably withheld, unreasonably conditioned or unreasonably delayed and obtain all necessary permits, licenses, and other approvals as required by CITY's Unified Land Development Regulations ("ULDR") for the design and construction of the ISHOF Improvements in accordance with the final plans and specifications;

(c) Subject to the terms and conditions of the Design-Build Construction Agreement, complete the design and construction of the ISHOF Improvements and pay all moneys due to any contractor or subcontractor performing the work on the ISHOF Improvements;

(d) Comply with all applicable federal, state, and local rules and regulations, including CITY's ULDR's, in completing the design and construction of the Qualified Project. HOFP acknowledges and agrees that this requirement includes compliance with all applicable federal, state, and local health and safety rules and regulations, including, but not limited to (i) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, applicable regulations regarding Trenching and Shoring; (ii) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (iii) Rules 38F and 38I, Florida Administrative Code; and (iv) Florida Department of Transportation Manual of Traffic Control and Safe Practices;

(e) Require that all contractors or subcontractors for the design and construction of the ISHOF Improvements of Qualified Project maintain commercially reasonable insurance as such insurance applies to each contractor's or subcontractor's scope of work and cause CITY and HOFP to be named as additional insureds on all required policies, except workers' compensation and professional insurance;

(f) Require all contractors and subcontractors of the Design-Builder to indemnify and hold harmless CITY and HOFP and its officers, agents, directors, and employees;

(g) In the event of a default under the Design-Build Construction Agreement as to particular phase, require an agreement with all of Design-Builder's contractors and subcontractors, as to such phase, representing that CITY and HOFP are third-party beneficiaries of the contract, entitled to enforce any rights thereunder for their respective benefits, and that, subject to the terms of the applicable contract, CITY and HOFP shall have the same rights and remedies vis-a-vis such contractors and subcontractors that the other party has including, without limitation, the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by CITY or HOFP, resulting from any breach of such contract, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and

any error, omission or negligence of such contractor or subcontractor in the performance of any of its obligations under such contract;

(h) Obtain prior CITY approval, not to be unreasonably withheld, unreasonably conditioned, or unreasonably delayed for any change orders requested by HOFPP on any particular phase of the Qualified Project that would materially amend the scope or quality of such phase of the Qualified Project, including the temporary ISHOF site provided however, CITY shall have a period of fifteen (15) Days to review and comment on any such change orders and in the event the CITY does not provide its response within said fifteen (15) day period, the change order shall be deemed approved by the CITY. In the event such change order is requested and/or caused by the City, as to any particular phase, the City shall pay for such change order. If the change order is requested and/or caused by the Design Builder or HOFPP, HOFPP shall pay for such change order request. If the change order is caused by any unknown condition existing at the Property, HOFPP shall pay for such change order.

(i) Employ reasonable and prudent safety precautions to prevent damage, injury or loss to personnel, the work, the Qualified Project, and the Property;

(j) Provide CITY with copies of all reports, warranties, design documents and as-builts.

(k) Allow CITY reasonable access to the Qualified Project for observation, inspection, monitoring, and testing as contemplated in Section 255.065(7)(a)(3), Florida Statutes; and

(l) Manage the appropriately licensed contractors to ensure that any work not conforming to the Approved Plans and Specification and the Design-Build Construction Agreement for any particular phase of the Qualified Project is corrected or removed and replaced.

**Section 3.04. Minimum Required Improvements.** Subject to Force Majeure events and Section 4.01 hereinbelow, HOFPP shall at its expense, complete, to both CITY's and HOFPP's reasonable satisfaction, the ISHOF Improvements as part of the Qualified Project within Five (5) years from the Commencement Date. Completion of the ISHOF Improvements, or the completion of a portion of the ISHOF Improvements, such as the West Building or ocean rescue building, shall occur when a temporary certificate of occupancy for such structure have been issued by the CITY.

**Section 3.05. Cost of Design.** Other than as specifically set forth in this Comprehensive Agreement, HOFPP shall be responsible for the cost of all design, demolition, permitting and construction of each phase of the Qualified Project.

**Section 3.06. Basis of Qualified Project.**

(a) The CITY acknowledges that the basis of the Qualified Project consists of: 1) a Ground Lease from the CITY to HOFPP; 2) a corresponding Master Facilities Lease for all the ISHOF Improvements and real property from HOFPP back to the CITY, which Master Facilities Lease will be amended to reflect the increase in rental as the improvements of a particular phase

are completed; and 3) the CITY to sub-lease a portion of the Improvements to ISHOF for museum purposes and the remaining Improvements to an ISHOF not for profit entity, ("ISHOF Affiliate Sublessee") which ISHOF Affiliate Sublessee will lease the remaining portion of the Improvements to multiple revenue generating tenants/concessionaires (ISHOF Sub- Subleases"). The revenues generated from these ISHOF Sub Subleases will be paid out in accordance with the terms of this Comprehensive Agreement.

**Section 3.07. Inspection Services.**

(a) The CITY hereby consents to HOFP's use of privatized inspection services, selected from the CITY's approved list of inspectors, at HOFP's option, and sole cost and expense, to perform, under the CITY's guidance, the various inspections and approvals required for the scope of work as to each phase constructed under this Comprehensive Agreement.

**Section 3.08. CITY Obligations.**

(a) Coordination/Assistance. CITY shall use its best efforts to hasten all permit reviews and processes associated with the permitting approval process as to each phase; provided, however, that CITY shall not be responsible for paying any increased costs associated with any such efforts. As deemed necessary by either CITY or HOFP as to each phase being constructed, CITY will join with HOFP as an applicant on all required applications, as the possessor of the Property, consistent with this Comprehensive Agreement and will support such applications throughout the review and approval process.

(b) Trips. Pursuant to the Trip Generation Statement prepared and updated by DC Engineers Inc., which is incorporated into this Comprehensive Agreement by reference as Exhibit 16, the CITY agrees to formally allocate such trips to the entire Project upon approval of the Site Plan. Based on the Trip Generation Statement, the Project needs eighty-two (82) trips for the Project. In the event that the CITY does not have the 82 trips available to allocate to the Project, HOFP can reduce the scope of the Project to meet the number of trips available for allocation to the Project. In the event there are not 82 trips available, HOFP will work with the CITY to determine the new scope, budget, trips, entitlements, interest rates and parking needs for the Project as so reduced in scope.

(c) Relocation of ISHOF. The CITY approves the temporary relocation of ISHOF as described in Section 3.03 hereinabove. The costs for such temporary relocation as well as the costs to move ISHOF back to the Project upon its completion shall be included in the Phase Development Budget for that particular phase and be a cost to HOFP.

(d) Leasing Representation. The CITY consents to HOFP, ISHOF and ISHOF Affiliate Sublessee being represented by Capital Group Realty as to the leasing of the ISHOF Improvements space being leased in accordance with this Comprehensive Agreement. Additionally, Capital Group Realty will work on pre-leasing space to perspective sub-sublessees on behalf of CITY. HOFP will provide the City with a copy of the form of the sub-subleases to be used in leasing the ISHOF Improvements to end users. The CITY shall have a right to review and approved said sub sub-lease form.

(e) Separate Parking Agreement. The CITY hereby agrees to work with HOFPP on a separate parking agreement as to the number of parking spaces to be reserved and made available to the Project and rate for same, which reserved parking spaces will be located in the Las Olas Garage for the Project's peninsula activities and related events.

(f) Use of Aquatic Center. Throughout the Term of this Agreement, and as more particularly set forth in Section 5.02(q) below, for a proposed thirty (30) weeks a year with a negotiated and agreed upon number of shows a week, to be held after regular operating hours once any Aquatic Center activities cease, or during operating hours if available and if the CITY has so agreed, the CITY shall provide that HOFPP, its agents, employees, vendors, invitees and ISHOF and the Facilities Manager mutually agreed upon access to the Aquatic Center Improvements for the purposes of the development of entertainment related activities, including but not limited to, water shows, dive shows and concerts, at the Aquatic Center Improvements and the Project. Beginning the first week in January 2024, and on an annual basis during the first week in January thereafter through the Term of this Comprehensive Agreement, the CITY agrees to provide to ISHOF, and the Facilities Manager a complete schedule of all CITY events and CITY scheduled use occurring at the Aquatic Center (the "CITY Schedule of Use"). HOFPP's and ISHOF's use of the Aquatic Center Improvements in accordance with this Section 3.08(f), shall be coordinated pursuant to the Facilities Management Agreement and the Facilities Manager shall facilitate such coordination and usage.

(g) Approval From Trustees. As a condition precedent to the execution of the Ground Lease and Master Facilities Lease as well as the closing of the Financial Plan, HOFPP and the CITY will work together and file any and all necessary paperwork, at HOFPP's cost, to obtain a waiver of any required revenue sharing and approval from the Trustees of the Internal Improvement Fund of the State of Florida that the overall development and operation of the Property and commencement and undertaking the activities described in this Comprehensive Agreement are approved uses and do not violate the terms, restrictions and dedications set forth in that certain Dedication by the Trustees of the Internal Improvement Fund of the State of Florida to the City of Fort Lauderdale recorded in Official Record Book 2611, page 315, Official Records of Broward County, Florida (the "Trustee Approval").

(h) CITY Change Request. If the CITY requests any changes to the Approved Plans and Specifications for any phase in the Qualified Project which cause an increase cost in the Design-Build Construction Agreement for such phase, the CITY shall be responsible for any and all such costs associated with said change order.

(i) Cancellation Prior to Master Facilities Lease Execution. Prior to the execution of the Master Facilities Lease, if the Project is cancelled, the CITY is unable to obtain Trustee Approval, or HOFPP is otherwise prevented from developing any or all of the phases of the Project as outlined in this Comprehensive Agreement through no fault of HOFPP, as well as the non-occurrence of the contingencies contained in this Comprehensive Agreement, then HOFPP may suspend the remainder of its activities under this Comprehensive Agreement and the CITY shall reimburse HOFPP, its agents, vendors, employees, consultants, contractors and attorneys the costs incurred by HOFPP for the work and services actually provided under this Comprehensive

Agreement, including, but not limited to, all pre-development and development costs and expenses as to Phase 1, and the CITY will own any resulting work product, plans and improvements. Notwithstanding the foregoing, the CITY's maximum liability for reimbursement hereunder shall be in an amount not to exceed Twenty Million and 00/100 Dollars (\$20,000,000) of Phase 1, prior to financial close. The maximum liability for reimbursement shall be adjusted with each phase of the Project as needed through the Master Facilities Lease as each respective new Phase is designed and constructed.

(j) Cancellation After Master Facilities Lease Execution. After the execution of the Master Facilities Lease, if the Project is cancelled or HOFPP is otherwise prevented from developing any or all of the phases of the Project as outlined in this Comprehensive Agreement through no fault of HOFPP, as well as the non-occurrence of the contingencies contained in this Comprehensive Agreement, which failure is caused by the CITY, then HOFPP may suspend the remainder of its activities under this Comprehensive Agreement and the CITY shall reimburse HOFPP, its agents, vendors, employees, consultants, contractors and attorneys the costs incurred by HOFPP for the work and services actually provided under this Comprehensive Agreement, including, but not limited to, all pre-development and development costs and expenses as to the particular phase or phases it was developing and the CITY will own any resulting work product, plans and improvements associated with such phase or phases. Notwithstanding the foregoing, the CITY's maximum liability for reimbursement hereunder shall be in an amount not to exceed the greater of (i) the amount actually invested as to such phase or phases pursuant to each such phase's Development Budget or (ii) the Lease Termination Payment as stated in Master Facilities Lease. The maximum liability for reimbursement shall be adjusted with each phase of the Project as needed through the Master Facilities Lease as each respective new Phase is designed and constructed.

(k) Cancellation Through Fault of HOFPP. After the execution of the Master Facilities Lease, if the Project is cancelled or HOFPP is otherwise prevented from or discontinues developing any or all of the phases of the Project as outlined in this Comprehensive Agreement through the fault of HOFPP, including the failure of HOFPP to obtain financing or close on its Financing Plan for a particular phase or phases of the Project, as well as the non-occurrence of the contingencies contained in this Comprehensive Agreement, which failure is caused by HOFPP, then HOFPP may suspend the remainder of its activities under this Comprehensive Agreement and the HOFPP shall be solely responsible for the payment to its agents, vendors, employees, consultants, contractors and attorneys the costs incurred by HOFPP for the work and services actually provided under this Comprehensive Agreement, including, but not limited to, all pre-development and development costs and expenses as to the particular phase or phases it was developing and the CITY will own any resulting work product, plans and improvements associated with such phase or phases.

(l) Roadway Easement. CITY shall grant to HOFPP a twenty (20) foot easement to be used for a portion of the Project roadway and for Project utilities through the following Aquatic Center Improvements which are comprised of a roadway and parking area and more

particularly described as follows and as more particularly shown on Exhibit 1 to this Comprehensive Agreement:

COMMENCING AT THE AFOREMENTIONED REFERENCE POINT "A"; THENCE NORTH 01°06'01" WEST, 9.49 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 01°06'01" WEST, 60.52 FEET; THENCE NORTH 88°39'05" EAST, 444.87 FEET; THENCE SOUTH 01°36'42" EAST, 13.30 FEET; THENCE SOUTH 88°23'18" WEST, 10.04 FEET; THENCE SOUTH 01°36'42" EAST, 24.73 FEET; THENCE NORTH 88°23'18" EAST, 10.04 FEET; THENCE SOUTH 01°36'42" EAST, 22.02 FEET; THENCE SOUTH 88°35'16" WEST, 357.17 FEET; THENCE SOUTH 88°36'08" EAST, 88.24 FEET TO THE POINT OF BEGINNING

**Section 3.09. No Representations by CITY.** HOFPP acknowledges that, except as expressly provided in this Comprehensive Agreement, as of the Effective Date, CITY, in its capacity as possessor of the Property, has made no representations, warranties or covenants to HOFPP regarding the condition of the Property, its habitability or fitness for any particular purpose, value, profitability, marketability, merchantability, or compliance with any governmental laws, ordinances, or regulations, including, without limitation, Environmental Laws, or any warranty (express or implied). HOFPP further acknowledges that it has not relied, and is not relying on any information, document or statement that may have been given on behalf of CITY. HOFPP may conduct its own independent investigation, inspection and evaluation of the Property. CITY is not obligated to investigate, alter, modify, remediate or improve the Property, nor is CITY obligated to indemnify HOFPP in connection therewith.

#### ARTICLE IV

#### COST OF THE QUALIFIED PROJECT

**Section 4.01. Cost of the Qualified Project.** The cost of each phase of the Qualified Project will be provided to the City as each phase is designed and developed. The cost of each phase of the Qualified Project consist of the cost of the construction and materials as well as design fees, management fees, legal fees, tenant improvement and furniture, fixtures and equipment costs, development costs and fees, financing fees and costs, marketing costs and project contingency. Any unused Project contingency at the end of the last phase of the Project shall be placed into a reserve fund to be used by the Facilities Manager for the benefit of the Project, including but not limited to, repairs, maintenance, additional enhancements, etc. The cost of each phase of the Qualified Project is expected to be fully funded by HOFPP on a phase-by-phase basis through private funds in accordance with its phased Financing Plan. Notwithstanding the forgoing, the Base Rent under the Master Facilities Lease shall be capped at Eleven Million and 00/100 Dollars (\$11,000,000) for lease year one assuming the first phase and all additional phases are constructed. Base Rent for subsequent years will be subject to a three percent (3%) cumulative annual increase for the term of the Master Facilities Lease. The CITY and HOFPP have agreed that in designing and developing each phase, HOFPP may decrease the scope and price of a particular phase of the Project to keep the Project within said cap, or in the alternative, increase the scope and price of a particular phase if such increase is off-set by revenues to be generated by such increase in scope and price of such particular phase of the Project, provided however, such increase or decrease in

scope and price of a particular phase of the Project shall be subject to CITY approval in accordance with this Comprehensive Agreement.

**Section 4.02. Cost Overruns.** To the extent that there are cost overruns associated with the construction of any phase of the Qualified Project, not caused by City change orders, such cost overruns will be paid by HOFPP.

**Section 4.03. Commencement of the Qualified Project.** CITY, and HOFPP shall cooperate so that construction on the first phase, and each phase thereafter, of the Qualified Project may commence within thirty (30) days of receipt the building permit for each respective phase. The Qualified Project shall thereafter proceed to be built in phases to completion.

## ARTICLE V

### THE PROPERTY AND GRANT OF USE

**Section 5.01. Grant of Use.** HOFPP and its agents, vendors, employees and contractors (including, without limitation, Design-Builder and the Facilities Manager) (collectively, the “HOFPP Parties”), are authorized to enter upon the Property for the purpose of conducting the activities necessary for the completion of the Qualified Project. All entries upon the Property shall be at the sole risk of HOFPP and the HOFPP Parties. The CITY shall have no liability for any injuries sustained by HOFPP or any HOFPP Parties.

**Section 5.02. HOFPP’s Rights and Obligations.** During the Term, HOFPP has, but is not limited to, the following rights, responsibilities, and obligations in connection with the Property:

(a) **Management of Development.** HOFPP will manage the overall development of the Property and ISHOF Improvements and commence undertaking the activities described in this Section 5.02.

(b) **Ground Lease.** The CITY, as Lessor will enter into a ground lease with HOFPP, as Lessee (the “Ground Lease”). HOFPP will develop and with Design-Builder, construct each phase of the ISHOF Improvements of the Qualified Project during the construction phase of the Ground Lease. Upon the completion of the first phase of the ISHOF Improvements and the issuance of the temporary certificate of occupancy, subject to an easement to HOFPP as to the construction of the additional ISHOF Improvements to be constructed during the additional phases, HOFPP will lease the entire Property together with the first phase of the ISHOF Improvements back to the CITY pursuant to a sublease by and between HOFPP, as Sublessor, and CITY, as Sublessee (the “Master Facilities Lease”). During the Ground Lease and the Master Facilities Lease, HOFPP will contract with Capital Group Realty for leasing coordination as to all sub sub-leases, as applicable, in the Project. Said sub-subleases will have the ISHOF Affiliate Sublessee as the sub sublessor.

(c) **ISHOF Relocation Site.** In order to ensure uninterrupted operations and to accelerate related income streams at the Property, it may be necessary to temporarily relocate ISHOF during the demolition of the existing building that currently houses the museum and construction of the phase of the Project in which the museum is to be located. If

relocated, ISHOF will be temporarily relocated to Site 1 as set forth in Exhibit 4 attached hereto and made a part hereof, with the location of the storage space for ISHOF to be determined by HOFP and ISHOF so that ISHOF can remain open and continue its operations during the demolition, development and construction of the Project. Design-Builder will manage the construction of the temporary tenant improvement space and HOFP will assist ISHOF with its temporary relocation. The cost associated with such construction is included in the Project Development Budget.

(d) Inspection and Testing. HOFP, will conduct such investigations, discoveries, inspections, and testing of the Property that are necessary for each phase of the Project as such phase is being developed, including geotechnical testing and boring, environmental studies, and surveying, as needed.

(e) Insurance. Except for Worker's Compensation and Professional Liability, HOFP will obtain and maintain the insurance further described in Article VIII, which shall list CITY as an additional insured for any policies relating to HOFP's development, construction and operation of the Property.

(f) Setting of Rental Rates. HOFP will set rental rates, use rates, and charges for the use of the Project by lessees and third parties. The CITY shall have the right to approve the rental rates, which approval will not be unreasonably withheld. The CITY shall have a period of fifteen (15) Days to review and comment on the rental rates and in the event the CITY does not provide its response within said fifteen (15) day period, the rental rates shall be deemed approved by the CITY. Notwithstanding the foregoing provisions, the CITY will not disapprove of any rental rates that HOFP can show are standard market rental rates for like properties in the area.

(g) Advertising and Promotion. In accordance with the terms and conditions of the sub-sub leases, HOFP will advertise and promote all events conducted at the Project, such advertising and promotion to mention or identify ISHOF to the extent practicable.

(h) Selection of Concessionaires. HOFP will select and employ all concessionaires, licensees and other contractors with respect to the Project, including, but not limited to, its parking lots, concession areas, and advertising space. HOFP will use its best efforts to select and employ local residents for the above referenced concessionaires, licensees and other contractors with respect to the Project.

(i) Contracts. HOFP will enter into lawful contracts in HOFP's name relating to any and all of the foregoing upon terms and conditions which are consistent with this Comprehensive Agreement.

(j) Compliance. HOFP will comply with all applicable laws, ordinances and regulations, including, but not limited to the requirements of the Americans with Disabilities Act of 1990 ("ADA") any amendments thereto, including Title II, Structural, and Title III, Programmatic Accessibility Standards, as well as any future additions.

(k) Financing. HOFP, in conjunction with MACQ-Florida II, LLC, a Delaware limited liability company ("MACQ"), will (i) coordinate the Project financing; (ii)



participate in the financing negotiations; (iii) participate in closing the financing; (iv) grant a leasehold mortgage on its leasehold interest in the Ground Lease; and (v) provide an assignment of the lease cash flows under the Master Facilities Lease.

(l) Design-Builder. HOFP will procure, negotiate, and contract with Design-Builder to design the Project in accordance with this Comprehensive Agreement. In the event HOFP changes the Design-Builder with another company during the term of this Comprehensive Agreement, said change shall be subject to CITY approval in accordance with the terms of this Comprehensive Agreement, which approval shall not be unreasonably withheld.

(m) Demolition. HOFP will contract with Design-Builder to manage the demolition and construction of the Project according to the final plans and specifications as to each phase.

(n) Leasing Plan. In accordance with the Leasing Plan, attached hereto as Exhibit 6, which shall include a kiosk leasing plan, HOFP and Capital Group Realty will coordinate, for and on behalf of the ISHOF Affiliate Sublessee, the sourcing of prospective sub-sublessees (the "ISHOF Affiliate Sub-Sublessees"). In conjunction with and pursuant to said Leasing Plan, the CITY hereby approves said Leasing Plan. The parties confirm that HOFP has negotiated terms of leases between the ISHOF Affiliate Sublessee, and the prospective ISHOF Affiliate Sub-Sublessees and has secured the letters of intent from prospective ISHOF Affiliate Sub-Sublessees representing over 50% of the projected yearly total revenue as required in the Interim Agreement for purposes of entering into this Comprehensive Agreement ("Letters of Intent"). Copies of said Letters of Intent have been delivered to the CITY as proprietary confidential business information constituting a trade secret under Florida Statutes, Chapter 119, Public Records Act, Chapter 688, Uniform Trade Secrets Act, and Chapter 812, Theft Robbery, and Related Crimes, and Chapter 815, Computer-Related Crimes.

(o) Facilities Manager. In order to ensure operational readiness, efficiency, and turn-key operation integration and controls for the Project, HOFP will engage Facilities Manager during the design, construction, and Project turnover phases. Additionally, the Facilities Manager shall, upon the completion of the ISHOF Improvements, be responsible for the operations and management of the ISHOF Improvements. A copy of the Draft Facilities Manager's contract, the details of which will be negotiated by and between HOFP, the CITY and the Facilities Manager during the demolition and construction of the initial phase of the Project, is attached hereto as Exhibit 14 and incorporated herein by reference.

(p) Access. In furtherance of Section 3.08(f), HOFP shall have access to mutually agreed upon areas in the Aquatic Center Improvements for purposes of holding various aquatic events, including but not limited to, shows, activities, events and fundraisers, during the times that the Aquatic Center Improvements are not being used by the CITY. All fees, net revenues and naming rights for said activities generated from HOFP's use of the Aquatic Center Improvements for such events, as mutually agreed upon per separate Use

Agreements, shall be Non-Lease Based Revenues (defined below) to be distributed pursuant to Section 5.02(q) hereinbelow.

(q) Revenue Sharing. HOF and the CITY here by agree to the following revenue sharing structure for the Project as to (i) the leasing revenues, which leasing revenues shall increase in the amount of three percent (3%) each year for the term of the Master Facilities Lease, and shall include all additional rents based on revenue share, if any, ("Lease Based Revenues"); and (ii) revenues generated from the shows, activities and programs, as more particularly described in Section 3.08(f) and Section 5.02(p), both set forth hereinabove ("Non-Lease Based Revenues") :

(i) The Facilities Manager shall be responsible for the collection and distribution of all Leases Based Revenues and Non-Leased Based Revenues as set forth above.

(ii) During the term of the Master Facilities Lease and this Comprehensive Agreement, subject to the ramp up period in the first year as more particularly set forth in the Master Facilities Lease ("Ramp-up Period"), beginning in the first year the ISHOF Leases commence and continuing for each consecutive year thereafter, the CITY shall be entitled to and be paid one hundred percent of the Lease Based Revenue.

(iii) During the term of the Master Facilities Lease and this Comprehensive Agreement, subject to the Ramp-up Period in the first year as more particularly set forth in the Master Facilities Lease, beginning in the first year the ISHOF Leases commence and for each year thereafter, the CITY shall be paid and receive the first Two Million and 00/100 Dollars (\$2,000,000) of the Non-Leased Based Revenue, which \$2,000,000 of the Non-Leased Based Revenue shall increase in the amount of three percent (3%) each year for the term of the Master Facilities Lease, ("City Preferred Revenues").

(iv) During the term of the Master Facilities Lease and this Comprehensive Agreement, beginning in the first year the ISHOF Leases commence and for each year thereafter, once the CITY has been paid the City Preferred Revenues, the Non-Lease Based Revenues will be split equally, fifty percent (50%) of said remaining Non-Lease Revenues to the CITY and fifty percent (50%) of said remaining Non-Lease Based Revenues to ISHOF.

(v) Notwithstanding the foregoing, during the term of the Master Facilities Lease and this Comprehensive Agreement, beginning in the first year the ISHOF Leases commence and for each year thereafter, the following items are excluded from the Non-Lease Based Revenues as to any leased space within the Project which ISHOF is leasing solely for ISHOF normal museum and business operations and shall be paid and/or retained directly by ISHOF throughout the term of the Master Facilities Lease and this Agreement ("ISHOF Excluded Revenues"):

1. ISHOF museum ticket and shop sales.
2. Revenues generated by the VIP suites located within ISHOF leased space.

3. Revenues generated by VIP seat sales as to VIP seats located within ISHOF leased space.

4. Facility Sponsorships during Events and Shows (as more particularly described in Section 3.08(f) set forth hereinabove).

5. Entertainment Venues for ISHOF as to Entertainment Venues located within ISHOF leased space.

6. Naming Rights within the respective ISHOF leased space areas in the East & West Buildings.

7. ISHOF shall have the right of first refusal to sub-lease the Flow Rider from the City and if ISHOF so chooses to sub-lease the Flow Rider from the CITY, any Flow Rider revenues shall be excluded from the Non-Leased Based Revenues in accordance with this Section 5.02(q)(iv).

(vi) During the term of the Master Facilities Lease and this Comprehensive Agreement, beginning in the first year the ISHOF Leases commence and for each year thereafter, once the CITY has been paid the City Preferred Revenues, the Non-Lease Based Revenues will be split equally, fifty percent (50%) of said remaining Non-Lease Revenues to the CITY and fifty percent (50%) of said remaining Non-Lease Based Revenues to ISHOF.

(vii) During the term of the Master Facilities Lease and this Comprehensive Agreement, beginning in the first year the ISHOF Leases commence and for each year thereafter, during normal business hours and upon two (2) days prior notice, the CITY shall have the right, at its sole cost and expense, to perform an annual audit of all Lease Based Revenues and Non-Lease Base Revenues, including all City Preferred Revenues pursuant to agreed upon accounting procedures. HOFPP shall cooperate and provide the CITY access to the books and records necessary for the CITY to perform its annual audit.

(viii) Additionally, during the term of the Master Facilities Lease, HOFPP will provide or will cause Facilities Manager to provide, monthly Leased Based Revenue and Non-Lease Based Revenue statements prepared by the Facilities Manager and an annual audited Leased Based Revenue and Non-Lease Based Revenue statement prepared by a certified public accountant ("CPA").

**Section 5.03. Third Party Rights.** During the Term of this Comprehensive Agreement, and except as otherwise provided in this Comprehensive Agreement, CITY agrees not to sell, lease, or otherwise transfer portions of or rights to the Property, except easements and rights of way for utility or governmental purposes, without the prior written approval of HOFPP, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed; provided, however, that CITY agrees that the reserved easements and rights-of-way for utility or governmental purposes shall not be exercised in a way to unreasonably interfere with HOFPP's use of the Property for the purposes described above.

**Section 5.04. Liaison.** HOFP shall name a person to be the liaison to work with CITY with respect to coordinating the mutual responsibilities of HOFP and CITY. HOFP hereby designates Mario Caprini as the liaison unless and until a new person is designated in writing by HOFP.

**Section 5.05. Limitations.** HOFP rights and obligations under this Comprehensive Agreement are subject to the following additional limitations:

(a) **Liens.** HOFP shall take no action which may result in the attachment of a lien or cloud on CITY's interest in or title to the Property. If, as a result of HOFP's actions, a lien or cloud is attached to CITY's interest or title to the Property, HOFP shall immediately take all reasonable and necessary steps to remove such lien or cloud.

(b) **Unlawful Use.** HOFP shall not knowingly occupy or use the Property Site for any purpose or in any manner that is unlawful or that is contrary to the Dedication.

(c) **Early Termination.** Upon the expiration or earlier termination of this Comprehensive Agreement, HOFP shall return to CITY the Property Site and all the then existing fixtures, free and clear of any contractual obligations or other legal encumbrances granted by HOFP, except for utility easements and other encumbrances necessary for the maintenance and operation of the Property Site. If requested by CITY following expiration or earlier termination of this Comprehensive Agreement, HOFP shall provide an unqualified quit claim deed or bill of sale for any real or personal property associated with this Comprehensive Agreement, including the then existing fixtures, or any abandoned property, or the Property Site. Notwithstanding the foregoing, the Ground Lease and the Master Facilities Lease shall survive any termination of this Comprehensive Agreement and be fully enforceable until the financing debt is paid in full.

(d) **Storage of Hazardous Materials.** Neither CITY nor HOFP will knowingly use the Property Site for the manufacture of storage of flammable, explosive or Hazardous Materials, except for Hazardous Materials typically found for use or sale in retail stores, including supermarkets and dry-cleaning stores, and/or typically found for use in comparable training facilities.

**Section 5.06. Rebranding; Naming Rights.** At all times during the Term of this Comprehensive Agreement, HOFP shall have the sole and absolute right, without the prior consent of CITY, to designate the name of any portion of the Property Site provided such name shall not be in bad taste or offensive to the CITY's image, or the ISHOF's image or in the reasonable opinion of the City Commission is a source of embarrassment to the Fort Lauderdale community. Provided HOFP has met the requirements set forth in this Section 5.06, the CITY cannot veto or block any of the entities from being granted naming rights from the HOFP. Additionally, HOFP shall have the right, in its sole discretion, to assign said naming rights set forth herein to ISHOF and/or the CITY. Notwithstanding and without limiting the foregoing, during the Term of this Agreement, the CITY shall have the right to veto any currently existing naming rights in the event that such name has become offensive to the CITY's image, or the ISHOF's image or in the reasonable opinion of the City Commission is a source of embarrassment to the Fort Lauderdale community. During the Term of this Comprehensive Agreement, all revenue generated from such naming

rights for the Property Site shall be designated as Non-Leased Based Revenues to be paid out in accordance to Section 5.02(q) Any naming rights generated from naming of the Aquatic Center Improvements in conjunction with the Qualified Project shall be designated as Non-Leased Based Revenues to be paid out in accordance with Section 5.02(q).

**Section 5.07. Broadcasting Rights.** HOFPP shall, at all times during the Term of this Comprehensive Agreement, have the sole, exclusive and absolute right to all broadcasting and/or streaming or the future equivalent thereof. During the Term of this Agreement, all revenue generated from such naming rights for the Property Site shall be designated as Non-Leased Based Revenues to be paid out in accordance to Section 5.02(q).

**Section 5.08. Public Boat Dock.** HOFPP shall at all times during the Term of this Comprehensive Agreement have the right to manage and control the public boat dock, which dock will also be used by various water taxi services. During the Term of this Comprehensive Agreement, HOFPP shall permit use of the dock by the public at such times and under such conditions as are reasonable.

**Section 5.09. Parking Facility.** During the Term of this Comprehensive Agreement, HOFPP shall have full control over the parking facilities located on the Project which shall include but not be limited to setting of rates, rules, regulations, establishing a valet parking plan and hours of operation. All parking revenue generated therefrom shall be designated as Non-Leased Based Revenues to be paid out in accordance to Section 5.02(q).

**Section 5.10. Cell Tower, Antenna and Digital/ Fixed Signage.** During the Term of this Comprehensive Agreement, HOFPP shall have full control over any and all cell tower, antenna or digital/fixed signage leases to be located on the East and West Buildings or any other structures within the Project. During the Term of this Comprehensive Agreement, all revenue generated from such cell tower, antenna or digital/fixed signage leases shall be designated as Non-Leased Based Revenues to be paid out in accordance to Section 5.02(q).

**Section 5.11. Records.** HOFPP and CITY acknowledge that certain information and data relating to this Comprehensive Agreement may be public records in accordance with Chapter 119, Florida Statutes. HOFPP agrees that it will implement policies and procedures to maintain, produce, secure, retain, and transfer public records in accordance with applicable laws, and regulations, including Sec. 119.0701, Florida Statutes. HOFPP agrees to provide CITY with a copy of all requested public records or to allow any public records to be inspected or copied within a reasonable time. HOFPP agrees to charge any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, for locating and producing public records during the Term of this Comprehensive Agreement. Upon the expiration of this Comprehensive Agreement, HOFPP shall transfer, at no cost, to CITY all public records in the possession of HOFPP or keep and maintain any public records required by CITY. If HOFPP transfers all public records to CITY upon the expiration of this Comprehensive Agreement, then HOFPP shall destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. If HOFPP keeps and maintains public records upon the expiration of this Comprehensive Agreement, then it will meet all applicable requirements for maintaining any public records. All records stored

electronically must be provided to CITY upon request in a format that is compatible with the information technology systems of CITY. Nothing in this Section is intended to suggest that all records related to the Project would be public records or that this Comprehensive Agreement is subject to Section 119.0701, Florida Statutes. HOFP and CITY shall cooperate to ensure that any records that are confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Term of this Comprehensive Agreement.

**IF HOFP HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS COMPREHENSIVE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.**

## **ARTICLE VI**

### **CONCESSIONS / ADVERTISING / PROMOTION**

#### **Section 6.01. HOFP's Concession Rights.**

(a) Concession Rights. The grant of concession rights to HOFP contained in Section 6.01(b) below is made pursuant to Section 19-72(c) of the CITY's Code of Ordinances and evidences the determination of the City Commission to grant such concession rights by negotiation.

(b) Concession Operations. During the Term of this Comprehensive Agreement, HOFP exclusively shall have all rights with respect to concession operations on the Property Site, including but not limited to: the right to select any concessionaire(s) for the Property Site at any time and for any and all events held at the Property Site; the right to negotiate and enter into an agreement with such concessionaire(s); the right to create temporary or permanent concession facilities at the Property Site during the Term of this Comprehensive Agreement; the right to administer any agreement with its concessionaire(s); the right to lease concession equipment to third parties at any time under rules, terms and conditions established by HOFP, in its sole discretion; the right to operate any restaurants, sports bars, taverns, wave machines or other water related activities and other synergistic uses on the Property Site; to determine what concession services are operated on the Property Site; all of the foregoing being subject to any and all applicable laws and ordinances. Further, HOFP shall have the sole right to determine what concession products are sold on the Property Site, and the price, quality and selection of the products sold. CITY agrees to join with HOFP in the filing of any meritorious application that requires joinder by the property owner, necessary to secure alcoholic beverage licensure under applicable law.

## ARTICLE VII

### OPERATIONS, MAINTENANCE AND REPAIR

#### **Section 7.01. HOFP's Rights and Obligations.**

(a) **Operating and Management Control.** During the Term of this Comprehensive Agreement, HOFP shall have exclusive operating and management control of the Property Site and shall employ the staff, or a management company, necessary to do so, except as otherwise set forth in this Comprehensive Agreement.

(b) **Maintenance Obligations.** During the Term of this Comprehensive Agreement and except as may be otherwise agreed by the parties in a separate writing, HOFP shall be responsible, or contract with a management company, for all Maintenance of the ISHOF Improvements including, but not limited to, the East and West buildings, parking facilities located within the Property Site, and temporary or permanent seating, fencing, ornamental landscaping, and irrigation system. HOFP shall be responsible, or contract with a management company, for the day-to-day Maintenance of the ISHOF Improvements on a year-round basis, including the provision of (or arrangements for third parties to provide) all personnel, supplies, equipment and services necessary in connection therewith.

(c) **Repair Obligations.** During the Term of this Comprehensive Agreement, HOFP shall, at HOFP's own expense, be obligated to, or contract for, repair of the ISHOF Improvements, including, but not limited to repair of any part of the ISHOF Improvements that is damaged as a result of the negligence or wrongful acts of HOFP or HOFP's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. HOFP shall be responsible, at HOFP's sole expense, for the repair of HOFP's and the HOFP's officers', employees', contractors', subcontractors', and agents' personal property, except for repairs of such property necessitated by the wrongful or negligent acts of CITY or its officers, employees, or agents.

**Section 7.02. Right of Entry.** During the Term of this Comprehensive Agreement, CITY has the right to enter into and upon any and all parts of the Property Site, including without limitation the ISHOF Improvements for the purpose of examining the same with respect to the obligations of the parties under this Comprehensive Agreement and pursuant to Section 255.065, Florida Statutes, upon two (2) Days prior written notice to HOFP.

**Section 7.03. Utilities.** During the construction of the improvements HOFP will be responsible and bear the cost of all utilities consumed in the construction of each respective phase. (such as gas, steam, electricity and water).

**Section 7.04. Fire or Other Casualty.** If, after the Effective Date, any portion of the ISHOF Improvements is damaged or destroyed in whole or in part by fire or other casualty, HOFP shall cause the prompt and expeditious repair, replacement or reconstruction of the affected facilities, subject to delays in adjusting the insurance loss and delays caused by an event determined to be Force Majeure. In addition, HOFP shall be responsible for repairing, replacing

or otherwise restoring all personal property and fixtures of HOFPP located at the ISHOF Improvements at HOFPP's election.

**Section 7.05. Environmental Hazards.**

**(a) Definitions.**

(i) Environmental Laws. As used in this Comprehensive Agreement, "Environmental Laws" shall mean any currently existing or subsequently enacted federal, state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions, and administrative orders), and all related amendments, implementing regulations and reauthorizations, which pertain to the preservation, conservation or regulation of the environment. Environmental laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq., the Clean Air Act, 42 U.S.C. §§7401 et seq., and the Clean Water Act, 33 U.S.C. §§1251 et seq.

(ii) Hazardous Material. For purposes of this Comprehensive Agreement, "Hazardous Materials" means any contaminant, chemical, waste, irritant petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyls, asbestos, hazardous toxic substance, material or waste of any kind, or any other substance that any environmental law regulates. "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 39 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; all applicable state and local laws; and in the regulations adopted and publications promulgated pursuant to said laws or any amendments or addenda thereto.

(iii) Environmental Hazard. "Environmental Hazard" means any use, exposure, release, generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material on, within, or from the Property.

(b) CITY's Responsibilities. CITY shall be solely responsible, at its own cost and expense, for the identification, management, control, containment, abatement, clean-up, removal and prevention of any Environmental Hazard that exists prior to the Effective Date and was not listed in the Environmental Report. CITY shall bear all costs and expenses associated with the identification, research and testing, management, control, containment, abatement, clean-up, removal and prevention of such Environmental Hazards not listed in the Environmental Report which are discovered subsequent to the date of this Comprehensive Agreement, are not caused by HOFPP and are not listed in the Environmental Report. Notwithstanding the foregoing, in the event any Environmental Hazards that are not currently listed in the Environmental Report, and are the responsibility of the CITY to bear all costs and expenses associated with the identification, research and testing, management, control, containment, abatement, clean-up, removal and



prevention of such Environmental Hazards, HOFPP, shall have the option to perform the clean-up work in the interest of time and be fully reimbursed by the CITY for such costs accordingly.

(c) HOFPP's Responsibilities. HOFPP shall be responsible at HOFPP's own cost and expense, for the identification, management, control, containment, abatement, clean-up, and removal of any Environmental Hazard that is listed in the Environmental Report. HOFPP shall comply with all Environmental Laws in connection with their use and occupancy of the ISHOF Improvements. HOFPP shall be solely responsible, at HOFPP's own cost and expense, for the identification, management, control, containment, abatement, clean-up, and removal of any Environmental Hazard that is the result of any act or omission of HOFPP or of any of HOFPP's officers, employees, agents, contractors, subcontractors, guests, licensees, invitees, or attendees, including being solely responsible for the prevention thereof.

## ARTICLE VIII

### INSURANCE

#### Design/Construction Insurance Requirements

**Section 8.01. Insurance Requirements.** As a condition precedent to the effectiveness of this Comprehensive Agreement, for each phase of development as such phase is being developed, HOFPP shall or shall cause the Design-Builder to procure and maintain until construction of such phase is complete and the construction work for such phase has been accepted by the CITY, at their sole expense, insurance of such types and with such terms and limits as noted in Section 8.01.01 unless the CITY approves a lesser amount of insurance for smaller scopes of work to be performed. Providing proof of and maintaining required insurance coverage for each phase are material obligations of Design-Builder. Design-Builder shall provide the CITY a certificate of insurance evidencing such coverage as to each phase as same is being developed. Design-Builder's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Design-Builder shall not be interpreted as limiting HOFPP's liability and obligations as to each phase under this Comprehensive Agreement. 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, subject to approval by the CITY's Risk Manager.

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 required to be relied upon by HOFPP or Design-Builder for assessing the extent or determining appropriate types and limits of coverage to protect HOFPP and/or Design-Builder against any loss exposures, whether as a result of this Comprehensive Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by HOFPP under this Comprehensive Agreement.

**8.01.01. Policies.** The following insurance policies and coverages are required as to each phase being developed unless the CITY approves a lesser amount of insurance for smaller scopes of work to be performed:

**Commercial General Liability**

Coverage must be afforded under a Commercial General Liability policy with limits of:

- \$5,000,000 each occurrence and \$5,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 project 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 10 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability assumed by HOFP under the indemnification provisions of this Comprehensive Agreement.

**Business Automobile Liability**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$2,000,000 combined single limit each accident.

If Design-Builder does not own vehicles, Design-Builder 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.

**Crane and Rigging Liability**

Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy or Property policy, as necessary, in line with the limits of the associated 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, Design-Builder shall procure and maintain any or all of the following coverage, as applicable:

- **Contractors Pollution Liability Coverage**

For sudden and gradual occurrences and in an amount not less than \$2,000,000 per claim arising out of this Comprehensive Agreement, including but not limited to, all hazardous materials identified under the Comprehensive Agreement.

- **Asbestos Liability Coverage**

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Comprehensive Agreement

- **Disposal Coverage**

CONTRACTOR shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount of \$1,000,000 per claim and shall include liability for non-sudden occurrences in an amount of \$1,000,000 per claim.

- **Hazardous Waste Transportation Coverage**

CONTRACTOR shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount of \$1,000,000 per claim limit and provide a valid ERA identification number.

### **Professional Liability and/or Errors and Omissions**

Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate.

Contractor must keep insurance in force until the third anniversary of acceptance of construction work by the CITY.

### **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 \$100,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause.
- Permission to occupy 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 CITY, HOFB and Design-Builder in the property against all risk of physical loss and damage, and name the CITY, HOFB and Design-Builder as Loss Payees. This insurance shall remain in effect until the work is completed and the property has been accepted by the CITY and HOFB.

### **Workers' Compensation and Employer's Liability**

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute.

Design-Builder waives, and Design-Builder shall ensure that Design-Builder's insurance carrier waives, all subrogation rights against the CITY and the CITY's officers, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

Design-Builder must 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.

### **Operations/Maintenance Insurance Requirements**

**Section 8.02. Insurance Requirements.** HOFB and Facilities Manager shall procure, or cause same to be procured, prior to acceptance of construction work by the CITY, and maintain during the Term of this Comprehensive Agreement and during any renewal or extension term of this Comprehensive Agreement, at its sole expense, insurance of such types and with such terms and limits as noted in Section 8.02.01. Providing proof of and maintaining adequate insurance coverage are material obligations of HOFB and Facilities Manager. HOFB and Facilities Manager shall provide the CITY a certificate of insurance evidencing such coverage. Facilities Manager insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by HOFB and Facilities Manager shall not be interpreted as limiting HOFB's and Facilities Manager's liability and obligations under this Comprehensive Agreement. 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, subject to approval by the CITY's Risk Manager.

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 required to be relied upon by HOFB and Facilities Manager for assessing the extent or determining appropriate types and limits of coverage to protect HOFB and Facilities Manager against any loss exposures, whether as a result of this Comprehensive Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by HOFB and Facilities Manager under this Comprehensive Agreement.

**8.02.01. Policies.** The following insurance policies and coverages are required:

**Commercial General Liability**

Coverage must be afforded under a Commercial General Liability policy with limits of:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 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 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability assumed by HOFPP and Facilities Manager under the indemnification provisions of this Comprehensive Agreement.

**Business Automobile Liability**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$1,000,000 combined single limit each accident.

If HOFPP and Facilities Manager does not own vehicles, HOFPP and Facilities Manager 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.

**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 \$100,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause.
- Any separate Flood and/or Windstorm deductibles are subject to approval by CITY.

This policy shall insure the interests of CITY and HOFPP and Facilities Manager in the property against all risk of physical loss and damage, and name CITY and HOFPP and Facilities Manager as Loss Payees.

**Collection of Insurance**

Subject to any lender insurance requirements under the Master Facilities Lease, in the event of (1) destruction of or damage to over fifty percent (50%) of any of the premises, buildings, other structures or ISHOF Improvements covered by insurance, and (2) HOFP's election to rebuild such premises, buildings, other structures or ISHOF Improvements pursuant to HOFP's option provided in this Comprehensive Agreement; the funds payable for reconstruction or repair 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 CITY, 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 ISHOF Improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances and charter of CITY. 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. In the event that 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 HOFP.

### **Workers' Compensation and Employer's Liability**

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute.

HOFP and Facilities Manager waives, and HOFP and Facilities Manager shall ensure that HOFP's and Facilities Manager's insurance carrier waives, all subrogation rights against the CITY and the CITY'S officers, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

HOFP and Facilities Manager must 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.

### **Section 8.03. Insurance Certificate Requirements**

As to each phase being developed:

(a) HOFP and Design Builder shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Comprehensive Agreement.

(b) HOFP and Design Builder shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

(c) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of HOFP and Design Builder to provide the proper

notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

(d) In the event the Comprehensive Agreement Term goes beyond the expiration date of the insurance policy, HOFB and Design Builder shall provide the CITY with an updated Certificate of Insurance prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Comprehensive Agreement until this requirement is met.

(e) 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.

(f) The CITY shall be named as an Additional Insured on all required Commercial General Liability, Business Automobile Liability and Pollution Liability policies.

(g) The CITY shall be named as a Loss Payee on the Builder's Risk and Property policies as the CITY's interests appear at the time of any loss.

(h) The CITY shall be granted a Waiver of Subrogation on HOFB and Design Builder's Workers' Compensation insurance policy.

(i) The title of the Comprehensive Agreement, Bid/Contract number, event dates, 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

HOFB and Design Builder 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. Any costs for adding the CITY as an Additional Insured shall be at HOFB and Design Builder's expense.

If HOFB and Design Builder's primary insurance policy/policies do not meet the requirements, as set forth in this Comprehensive Agreement, HOFB and Design Builder may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

HOFB and Design Builder'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 lapse in coverage shall be considered breach of contract. In addition, HOFB and Design Builder must provide to the CITY confirmation of coverage renewal via an updated

certificate should any policies expire prior to the expiration of this Comprehensive Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of HOFB and Design Builder's insurance policies.

HOFB and Design Builder shall provide notice of any and all claims, accidents, and any other occurrences associated with this Comprehensive Agreement to HOFB and Design Builder's insurance company or companies and the CITY's Risk Management office, as soon as practical.

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

## ARTICLE IX

### INDEMNIFICATION

**Section 9.01. Protect, Defend, Indemnify.** HOFB shall protect, defend, indemnify and hold harmless the CITY, its officials, officers, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of HOFB under this Comprehensive Agreement, or the breach or default by HOFB, its agents, servants, employees or contractors of any covenant or provision of this Comprehensive Agreement, the negligent acts or omission or willful misconduct of HOFB or its agents, servants, employees or contractors, but only to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of HOFB and persons employed or utilized by HOFB in the performance of this Comprehensive Agreement. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the Property by HOFB, its agents, servants, employees or contractors, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by HOFB, its agents, servants, employees or contractors or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by HOFB, its agents, servants, employees or consultants is included in the indemnity.

HOFB further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at their sole expense and agree to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by CITY and HOFB shall assume and defend not only themselves but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the CITY. This indemnification shall survive termination, revocation or expiration of this Comprehensive Agreement and shall cover any acts or omissions occurring during the Term of the Comprehensive Agreement, including any period after termination, revocation or expiration of the Comprehensive Agreement while any curative acts are undertaken and is not limited by insurance coverage. Notwithstanding the foregoing, in no event shall the



discovery by HOFP of Hazardous Materials contamination at the Property alone be considered damage to property, resulting from HOFP or their agents, servants, employees or contractors' use of or access to the Property which is subject to the indemnity covenants of HOFP contained herein.

**Upon request by CITY, HOFP shall provide copies of all property condition reports and environmental assessments conducted, or surveys completed by HOFP, its agents, employees or contractors on the Property.**

**Section 9.02. HOFP To Protect.** All construction materials, equipment, goods, signs and any other personal property of HOFP, its agents, servants, employees or contractors, shall be protected solely by HOFP. HOFP acknowledges and agrees that the CITY assumes no responsibility, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of HOFP.

**Section 9.03.** Except as prohibited by the Florida Constitution or by the laws of the State of Florida, and subject to the limitations contained in Section 768.28, Florida Statutes (2018) as amended or revised, CITY agrees to indemnify and hold harmless HOFP and Facilities Manager against a judgment entered by a court of competent jurisdiction in the State of Florida against HOFP and Facilities Manager for damages or injuries caused by CITY's negligence in CITY's use of the Property. The foregoing sentence shall not serve as a waiver of CITY's sovereign immunity or of any other legal defense available to CITY. Such indemnity shall be limited by the extent to which such costs are caused or contributed to by HOFP and Facilities Manager or HOFP's and Facilities Manager's directors, officers, employees, agents, guests, invitees, licensees, attendees, or those for whom HOFP and Facilities Manager are at law responsible (whether by reason of comparative negligence or otherwise) or by other third parties.

**Section 9.04. Procedure Regarding Indemnification.**

(a) **Notice of Claim.** The Indemnified Party shall provide the Indemnifying Party with written notice whenever the Indemnified Party receives notice of a claim that would invoke an indemnification provision contained in this Comprehensive Agreement. Such written notice shall be furnished to the Indemnifying Party as soon as practical after the Indemnified Party receives notice of the claim or is served with process in connection with the claim. In the case of service of process of the initial pleading in a lawsuit, the Indemnified Party shall provide its written notice to the Indemnifying Party within such time as may be necessary to give the Indemnifying Party a reasonable opportunity to respond to such process. The Indemnified Party's written notice to the Indemnifying Party of any claim shall include a statement of information pertaining to the claim then in the possession of the Indemnified Party. Any failure or delay of the Indemnified Party to notify the Indemnifying Party as required by this Section shall not relieve the Indemnifying Party of its obligation to provide indemnification, unless and to the extent that such failure or delay materially and adversely affects the Indemnifying Party's ability to defend against, settle, or satisfy the claim.

(b) Defense of Claims; Notice of Intent to Defend. After receiving notice of a claim, the Indemnifying Party shall defend the claim at its own expense, through attorneys, accountants, and others selected by the Indemnifying Party with the reasonable concurrence of the Indemnified Party. The Indemnifying Party shall notify the Indemnified Party in writing of its intent to contest or defend the claim. Such notice shall be provided not later than 20 days after the Indemnifying Party receives notice of the claim from the Indemnified Party. If the Indemnifying Party fails to provide the Indemnified Party with written notice of its intention to defend the claim, the Indemnified Party shall have the right; (a) to authorize attorneys satisfactory to it to represent it in connection with the claim; and/or (b) to defend, settle or compromise the claim. If the Indemnified Party exercises either or both of its rights under this Section, it shall be indemnified by the Indemnifying Party to the same extent as if the Indemnifying Party had defended or settled the claim.

(c) Cooperation with Defense. If and so long as the Indemnifying Party is actively contesting or defending a claim in accordance with this Section, the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in such contest or defense, shall join in making any appropriate and meritorious counterclaim or cross-claim in connection with the claim, except that in CITY's case, such joinder in a counterclaim or cross-claim shall be subject to CITY's prior approval, and shall provide such access to the books and records of the Indemnified Party as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnifying Party.

(d) Settlement of Claims by Indemnified Party. The Indemnified Party shall have the right at any time to settle, compromise or pay any claim with or without the consent of the Indemnifying Party, but (a) taking such action without the Indemnifying Party's consent shall be deemed a waiver and nullification by the Indemnified Party of all indemnification obligations that the Indemnifying Party would otherwise have with respect to the claim under this Section, and (b) such settlement or compromise shall not cause the Indemnifying Party to incur any present or future cost, expense, obligation or liability of any kind or nature, or otherwise adversely affect the rights of the Indemnifying Party.

(e) Settlement of Claims by Indemnifying Party. Any claim may be settled or compromised by the Indemnifying Party without the Indemnified Party's consent, so long as: (i) the Indemnifying Party gives the Indemnified Party reasonable prior written notice of its intention to settle or compromise the claim; and (ii) such settlement or compromise does not cause the Indemnified Party to incur any present or future cost, expense, obligation or liability of any kind or nature, or otherwise adversely affect the rights of the Indemnified Party.

(f) Claims Involving Matters Not Subject to Indemnification. If a claim involves matters partly within and partly outside the scope of the Indemnifying Party's obligation to indemnify as provided in this Section, the attorneys' fees, costs, and expenses of contesting or defending such a claim shall be allocated equitably between the Indemnified Party and the Indemnifying Party, in a manner agreed upon in writing by the parties, and subject to the limitations of Section 768.28, Florida Statutes.

## ARTICLE X

### DEFAULT / TERMINATION

**Section 10.01. HOFP Default.** The occurrence of the following shall constitute a "Default" by HOFP under this Comprehensive Agreement: Failure by HOFP to, or for HOFP to cause Facilities Manager to, observe or perform in any material respect any material covenant, agreement, condition, or provision of this Comprehensive Agreement, if such failure continues for thirty (30) Days after written notice thereof has been delivered by CITY to HOFP; provided, however, that HOFP will not be in Default with respect to matters which cannot reasonably be cured within thirty (30) Days so long as within such thirty (30) Day period, HOFP commences such cure and diligently proceeds to complete the same thereafter. However, in no event shall a cure period for a Default continue for more than three hundred sixty-five (365) days.

**Section 10.02. CITY Default.** In the event of any failure by CITY to observe or perform any material covenant, agreement, condition, or provision of this Comprehensive Agreement wherein HOFP's remedies on account thereof are not otherwise specifically provided for in this Comprehensive Agreement, and if such failure shall continue for thirty (30) days after written notice thereof has been delivered by HOFP to CITY, then CITY will be deemed to be in Default hereunder; provided, however, that CITY will not be in Default with respect to matters which cannot reasonably be cured within thirty (30) days so long as within such thirty (30) day period, CITY commences such cure and diligently proceeds to complete the same thereafter. However, in no event shall a cure period for a Default continue for more than three hundred sixty-five (365) days.

**Section 10.03. Cessation of Use by HOFP.** If, at any time during the Initial Term (and any Renewal Term), HOFP ceases to permanently operate the Property Site as described in ARTICLE V hereof, such event will constitute a "Cessation of Use" of the Property Site by HOFP. Notwithstanding anything to the contrary contained in this Comprehensive Agreement, a Cessation of Use of the Property Site by HOFP will entitle CITY to terminate this Comprehensive Agreement by giving HOFP sixty (60) Days written notice of termination. HOFP will have sixty (60) Days after receipt of the aforementioned notice of termination to renounce the Cessation of Use by confirming to CITY its intention to continue to use the Property Site during the Term in the manner described in ARTICLE V hereof and in fact demonstrating that it is reasonably complying with its operational covenant. A termination pursuant to the provisions of this Section 10.03 will become effective upon the expiration of HOFP's one hundred twenty (120) Day cure period, or its repeated failure to demonstrate that it is reasonably complying with its operational covenant as provided by this Section after notice by CITY.

**Section 10.04. Notices; Disputed Defaults; Immediate Relief for Certain Defaults.**

(a) **Notices.** If a party believes in good faith that the other party has breached any of its material obligations under this Comprehensive Agreement, is in Default as provided in Sections 10.01, 10.02 or 10.03, or has failed to cure a previously noticed Default, the Non-

Defaulting Party shall promptly notify the Defaulting Party in writing of the nature of the breach, Default or failure to cure.

(b) Disputed Defaults. Except as otherwise provided herein, whenever a notice asserting a breach, Default or failure to cure is provided, the Defaulting Party shall notify the Non-Defaulting Party in writing, within 10 Days after receiving the Non-Defaulting Party's notice, if the Defaulting Party disputes the assertion that it is in Default, or asserts that it has cured a previously noticed Default in accordance with this ARTICLE X.

**Section 10.05. Remedies; Nature of Relief; Defenses.**

(a) Non-Defaulting Party. If a party is in Default as provided in this ARTICLE X, the Non-Defaulting Party may enforce this Comprehensive Agreement and obtain legal or equitable relief for the Default in a court of competent jurisdiction in accordance with the venue provision contained in this Comprehensive Agreement

(b) Defenses. The Defaulting Party shall be entitled to defend all claims, assertions, and requests for relief by the Non-Defaulting Party, and may raise all legal and equitable counter-claims and defenses as may be available to the Defaulting Party under this Comprehensive Agreement or applicable law, except as otherwise provided herein.

**Section 10.06. No Waiver.** The failure by HOFP or CITY to insist in any one or more instances upon the other party's strict performance of any of its obligations under this Comprehensive Agreement shall be limited to that particular instance, and shall not be deemed or construed as a waiver or relinquishment of the right to require and enforce the future performance of such obligations. No waiver by HOFP or CITY of any provision of this Comprehensive Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of CITY or by an officer of HOFP.

**Section 10.07. Ground Lease and Master Facilities Lease.** Notwithstanding the foregoing, in the event of default by either HOFP or the CITY or the termination of this Comprehensive Agreement, the Ground Lease and the Master Facilities Lease shall remain in full force and effect until such time as the financing is paid in full and the leasehold mortgage has been released.

ARTICLE XI

**FORCE MAJEURE**

**Section 11.01. Force Majeure.** Force Majeure shall mean any fire or other casualty, an act of God, war, act(s) of terrorism, riots, strikes, labor disputes or boycotts, pandemics, intervention by civil or military government authorities, or any other causes whatsoever beyond the control of the parties. Notwithstanding the foregoing, the legislative acts of CITY or the County of Broward or the State of Florida, shall not constitute a Force Majeure. If a Force Majeure event prohibits or prevents a party, whether directly or indirectly, from performing any of its obligations under this Comprehensive Agreement, such party shall be excused from such performance until the impact from the Force Majeure event terminates or is removed. During such period of

prevention or prohibition, the parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure event as promptly as reasonably possible.

## ARTICLE XII

### REPRESENTATIONS AND WARRANTIES

**Section 12.01. Representations by HOFP.** HOFP represents and warrants, as of the Effective Date and at all times during the Term of this Comprehensive Agreement, as follows:

(i) Legal Entity; Good Standing. HOFP is a limited liability company validly existing and in good standing under the laws of the State of Florida and is duly authorized to conduct business in the State of Florida.

(ii) Authority; No Limitation on Ability to Perform. HOFP is duly authorized and has the power and authority to enter into this Comprehensive Agreement and to carry out and perform each of its obligations under this Comprehensive Agreement. No provision of any charter or by-law or partnership agreement of HOFP shall in any way prohibit, limit or otherwise affect the right or power of HOFP to perform its obligations under this Comprehensive Agreement.

(iii) Valid Execution. The execution of this Comprehensive Agreement by HOFP has been duly and validly authorized by all necessary corporate action in accordance with HOFP's corporate documents, and this Comprehensive Agreement is a valid and binding obligation of HOFP, enforceable against HOFP in accordance with its terms.

(iv) Subject to the Dedication. HOFP acknowledges that the Property and Qualified Project is the subject to the terms of that certain Dedication from the Trustees of the Internal Improvement Trust Fund of the State of Florida, as recorded in Official Records Book 2611, Page 315, of the Public Records of Broward County, Florida.

**Section 12.02. Representations by CITY.** CITY represents and warrants, as of the Effective Date and at all times during the Term of this Comprehensive Agreement, as follows:

(a) Body Corporate and Politic. CITY is a validly existing Florida municipal corporation.

(b) Valid Execution. The execution of this Comprehensive Agreement together with all documentation contemplated hereby, including without limitation, the Ground Lease and Master Facilities Lease, by CITY has been duly and validly authorized by CITY, and this Comprehensive Agreement is a valid and binding obligation of CITY, enforceable against CITY in accordance with its terms.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Marketing/Promotion.** HOFP intends to enter into agreements between HOFP and third-parties with regard to marketing and promotional opportunities. CITY, subject to CITY's exercise of CITY's sole discretion, agrees to assist HOFP with offsite signage including traffic signs and directional signage, and include Property Site in appropriate marketing and tourism materials and information and public relations campaigns.

**Section 13.02. Public Records.** All records made or received by CITY in connection with this Comprehensive Agreement shall be public records subject to public inspection and copying pursuant to the Florida public records law absent an applicable statutory exemption. Florida public records laws shall apply to records made or received by HOFP in its capacity as a private entity acting on behalf of any public agency absent an applicable statutory exemption. HOFP shall defend at HOFP'S expense, counsel being subject to CITY's approval, and indemnify and hold harmless CITY and CITY's officers, employees, and agents against any and all claims, losses, fines, penalties, judgments, third party claims, and damages, including any award of costs and any award of attorney fees, that may arise out of or be occasioned by CITY's treatment of any records as public records, and against any and all claims, losses, fines, penalties, judgments, third party claims, and damages, including any award of costs and any award of attorney fees, that may arise out of or be occasioned by CITY's or HOFP'S treatment of any records as exempt from disclosure.

**Section 13.03. Binding effect; No third party rights.** This Comprehensive Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Except for ISHOF and ISHOF Affiliate Sublessee, the Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Comprehensive Agreement. Neither of the Parties intends to directly or substantially benefit a third party by this Comprehensive Agreement. The Parties agree that there are no third party beneficiaries to this Comprehensive Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Comprehensive Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract. Notwithstanding the foregoing, in connection with the Project financing by MACQ, the CITY acknowledges and consents to (i) HOFP collaterally assigning its rights under this Comprehensive Agreement to MACQ; (ii) to HOFP granting a leasehold mortgage under the Ground Lease; and (iii) to HOFP assigning to MACQ, HOFP's rights to collect rent and enforce the provisions of the Master Facilities Lease.

**Section 13.04. Surrender of the Site.** Upon the expiration or earlier termination of this Comprehensive Agreement, HOFP shall peaceably surrender the Property Site to CITY in good order and in the same condition as on the date on which a certificate of occupancy is issued for the ISHOF Improvements, ordinary wear and tear excepted. Upon the expiration or termination of this Comprehensive Agreement, HOFP shall immediately remove all property owned by HOFP and

which HOFPP are permitted or required to remove from the Property under the provisions of this Comprehensive Agreement.

**Section 13.05. Time of the Essence.** As described herein, time is of the essence as to the Qualified Project and the terms and conditions of this Comprehensive Agreement.

**Section 13.06. Further Assurances.** HOFPP and CITY shall each execute, acknowledge and deliver, after the execution of this Comprehensive Agreement, without additional consideration, such further assurances and shall take such further actions as HOFPP and CITY shall reasonably request of the other in order to fulfill the intent of and the transactions contemplated by this Comprehensive Agreement, including without limitation, as may be reasonably required by MACQ in connection with the Project financing.

**Section 13.07. Consents.** No consent or approval by CITY or HOFPP required under the terms of this Comprehensive Agreement shall be valid unless it is signed by an authorized officer of the party giving such consent or approval. In all instances where the consent or approval of CITY or HOFPP is required with respect to any decision or action of the other party, such consent, approval or concurrence shall not be withheld unreasonably. Notwithstanding the foregoing, either party shall be entitled to withhold its consent or approval on a matter that is left to that party's sole discretion as provided elsewhere in this Comprehensive Agreement. If either party withholds its consent or approval in response to a request from the other party for such consent or approval, the party disapproving the matter in question shall, simultaneously with their response, state in writing its reasons for such disapproval, unless the matter in question is one of the matters expressly left to that party's sole discretion as provided elsewhere in this Comprehensive Agreement.

**Section 13.08. Legal Review; Construction.** The Parties hereby acknowledge that this Comprehensive Agreement is the product of negotiation between the Parties and their respective legal counsel and that no provision of this Comprehensive Agreement shall be construed against a party solely because that party or that party's counsel drafted such provision.

**Section 13.09. Calculation of Time.** Whenever any provision of this Comprehensive Agreement requires or permits any act or decision to be performed or made within a specified period of time, the day of the act or event from which the designated time period begins to run shall not be included in computing such time period. The last day of such period shall be included, unless it is a Saturday, Sunday, or a legal holiday in the State of Florida, in which case the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday in the State of Florida. All notice and other time periods shall expire as of 5:00 p.m. Eastern Standard Time on the last day of the notice or other period.

**Section 13.10. No Waiver of Sovereign Immunity.** Nothing contained in this Comprehensive Agreement is intended to serve as a waiver of sovereign immunity by CITY. Notwithstanding the foregoing, this Section 13.10 relates to tort matters only, and shall not be construed to limit, curtail or condition the rights, remedies or liabilities of any party hereto in any contract action based upon express written terms of any contract or agreement.

**Section 13.11. Non-Discrimination.** HOFP, Design-Builder and Facilities Manager shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Comprehensive Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**Section 13.12. Severability.** If any provision of this Comprehensive Agreement, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Comprehensive Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Comprehensive Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Comprehensive Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Comprehensive Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Comprehensive Agreement, unless otherwise expressly provided. All terms and words used in this Comprehensive Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

**Section 13.13. Entire Agreement.** This document 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 Comprehensive Agreement 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.

**Section 13.14. Governing Law.** This Comprehensive Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Comprehensive Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Comprehensive Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **By entering into this Comprehensive Agreement, CITY and HOFP hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Comprehensive Agreement or any acts or omissions in relation thereto.**

**Section 13.15. Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” HOFP, Design-Builder and Facilities Manager certify that they are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2020), as may be amended or



revised. The CITY may terminate this Comprehensive Agreement at the CITY's option if HOFP, Design-Builder and Facilities Manager are found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

**Section 13.16. Notice.** Whenever any party desires to give notice to any other party, it must be given by written notice sent by electronic mail, followed by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

**CITY:**

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Attn: City Manager ([GChavarria@fortlauderdale.gov](mailto:GChavarria@fortlauderdale.gov))

With a copy to:

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Attn: City Attorney

**HOFP:**

Hall of Fame Partners, LLC  
c/o Capital Group P3 Developments of Florida LLC  
55 NE 5th Avenue, Suite 501  
Boca Raton, FL 33432  
Attn: Mario Caprini ([mcaprini@capitalgroupp3.com](mailto:mcaprini@capitalgroupp3.com))

Hensel Phelps Construction Co.  
888 SE 3<sup>rd</sup> Avenue, Suite 200  
Fort Lauderdale, FL 33316  
Attn: Cory Olson ([cmolson@henselphelps.com](mailto:cmolson@henselphelps.com))

MACQ Holdings, LLC  
1055 Thomas Jefferson St, NW  
Suite L35

Washington, DC 20007  
Attn: Jonathan Kling ([jkling@municipalacquisitions.com](mailto:jkling@municipalacquisitions.com))

With a copy to:

Becker  
1 East Broward Blvd., Suite 1800  
Fort Lauderdale, FL 33301  
Attn: Jennifer Bales Drake, Esq., ([jdrake@beckerlawyers.com](mailto:jdrake@beckerlawyers.com))

**Section 13.17. Delegated Authority.** Subject to the approval of the City Attorney, the Mayor and the City Manager shall have the power, authority and right, on behalf of the CITY, and without any further resolution or action of the City Commission, to negotiate the final terms and execute the documents approved in substantially the form attached to this Comprehensive Agreement, as set forth in Section 1.01 above, as well as all documents that are ancillary to the Project and consistent with the terms of this Comprehensive Agreement.


**Section 13.18. E-VERIFY.** Florida Statute 448.095 directs all public employers, including municipal governments, to verify the employment eligibility of all new public employees through the U.S. Department of Homeland Security's E-Verify System, and further provides that a public employer may not enter into a contract unless each party to the contract registers with and uses the E-Verify System. Florida Statute 448.095 further provides that if HOFPP enters into a contract with a subcontractor, the subcontractor must provide HOFPP with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. In accordance with Florida Statute 448.905, HOFPP is required to verify employee eligibility using the E-Verify System for all existing and new employees hired by HOFPP during the Term of this Agreement. Further, HOFPP must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of HOFPP to ensure compliance with E-Verify requirements, as applicable. To enroll in E-Verify, employers should visit the E-Verify website (<https://www.e-verify.gov/employers/enrolling-in-e-verify>) and follow the instructions. HOFPP must retain the I-9 Forms for inspection, and provide the attached E-Verify Affidavit, attached hereto as Exhibit 18.

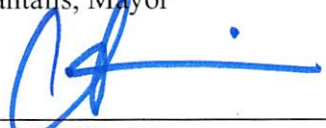
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[SIGNATURES ARE ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Comprehensive Agreement to be effective as of the day and year first set forth above.

**CITY OF FORT LAUDERDALE, a Florida  
municipal corporation**

By:   
Dean J. Trantalis, Mayor

By:   
Greg Chavarria, City Manager

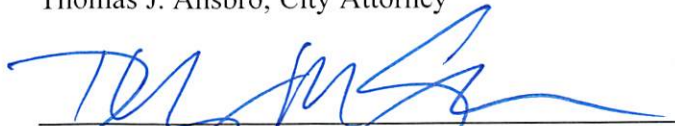
**ATTEST:**

  
David R. Soloman, City Clerk



**APPROVED AS TO FORM AND CORRECTNESS:**

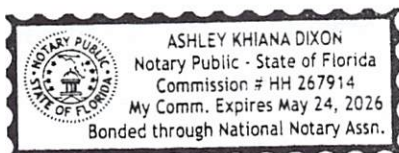
Thomas J. Ansbro, City Attorney

  
D'Wayne M. Spence, Deputy City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24 day of October, 2023, by Dean J. Trantalis as Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(NOTARY SEAL)



  
(Signature of Notary Public – State of Florida)

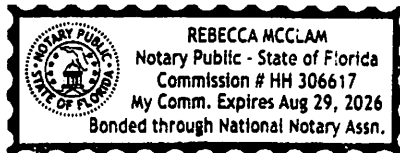
Ashley K. Dixon  
Print, Type or Stamp Commissioned Name of  
Notary Public)

**[ACKNOWLEDGEMENT FOR CITY MANAGER ON FOLLOWING PAGE]**

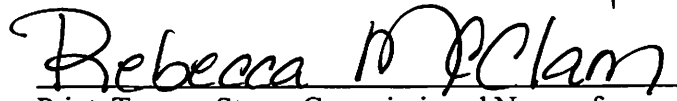
STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 20th day of October, 2023, by Greg Chavarria as City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(NOTARY SEAL)



  
(Signature of Notary Public – State of Florida)

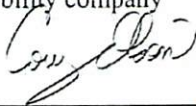
  
Print, Type or Stamp Commissioned Name of  
Notary Public)

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[HALL OF FAME SIGNATURE ON FOLLOWING PAGE]



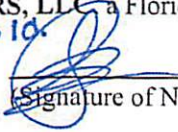
HALL OF FAME PARTNERS, LLC, a Florida  
limited liability company

By:   
Cory Olson, Manager

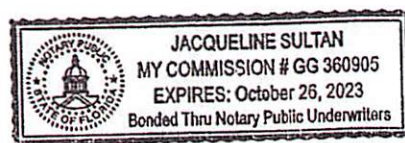
By:   
Mario Caprini, Manager

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence  
or ☐ online notarization, this 1<sup>st</sup> day of September, 2023, by Cory Olson as  
Manager of HALL OF FAME PARTNERS, LLC, a Florida limited liability company. who  
produced a driver's license as ID.  
(NOTARY SEAL)

  
(Signature of Notary Public – State of Florida)

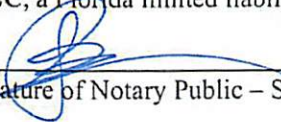
Jacqueline Sultan  
Print, Type or Stamp Commissioned Name of  
Notary Public)



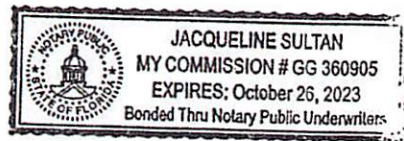
[ACKNOWLEDGEMENT FOR MARIO CAPRINI ON FOLLOWING PAGE]

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence  
or ☐ online notarization, this 1<sup>st</sup> day of September, 2023, by Mario Caprini as  
Manager of HALL OF FAME PARTNERS, LLC, a Florida limited liability company. who produced  
a driver's license as id  
(NOTARY SEAL)

  
(Signature of Notary Public – State of Florida)

Jacqueline Sultan  
Print, Type or Stamp Commissioned Name of  
Notary Public – State of Florida





COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM

11

Today's Date: 10/16/2023

DOCUMENT TITLE: HALL OF FAME PARTNERS LLC – COMPREHENSIVE AGREEMENT

COMM. MTG. DATE: 9/19/2023 CAM #: 23-0723 ITEM #: PH-1 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: J. Larregui/5106 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 10/16/23 D'Wayne M. Spence  
Attorney's Name Initials

2) City Clerk's Office: # of originals: 1 Routed to: Donna V./Aimee L./CMO Date: 10/18/23

3) City Manager's Office: CMO LOG #: OCT 19 Document received from: 10/19/23  
Assigned to: GREG CHAVARRIA ☐ BT 11/02/23  
ANTHONY FAJARDO ☐  
SUSAN GRANT ☐  
GREG CHAVARRIA as CRA Executive Director ☐

☐ APPROVED FOR G. CHAVARRIA'S SIGNATURE ☐ N/A FOR G. CHAVARRIA TO SIGN

PER ACM: A. Fajardo \_\_\_\_\_ (Initial/Date) S. Grant \_\_\_\_\_ (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: ✓

Forward ☒ originals to ☐ Mayor ☒ CCO Date: 10/20/23 BT CEO 11/03/23

4) Mayor/CRA Chairman: Please sign as indicated. Forward \_\_\_\_\_ originals to CCO for attestation/City seal (as applicable) Date: \_\_\_\_\_

5) City Clerk: Scan original (In Color) and forward 1 originals to: J. Chism/CAO/Ext. 5035

Attach \_\_\_\_\_ certified Reso # \_\_\_\_\_ ☐ YES ☒ NO Original Route form to J. Larregui/CAO

Rev. 11/2022