



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

(2) ✓ 2/9/17

Today's Date: 1/24/2017

DOCUMENT TITLE: REVISED LICENCE AGREEMENT FOR AERIAL ADVENTURE COURSE – AIRPLAY ADVENTURES LLC

COMM. MTG. DATE: 11/1/2016 CAM #: 16-1337 ITEM #: PUR-11 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Astrid Sperling/5001 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: 2

Is attached Granicus document Final? ☒ YES ☐ NO

Approved as to Form: ☒ YES ☐ NO

Date to CCO: 2-1-17

Cole Copertino
Attorney's Name

[Signature]
Initials

2) City Clerk's Office: # of originals: 2 Routed to: Gina Ri/CMO/X5013 Date: 2/1/17

3) City Manager's Office: CMO LOG #: Feb-3 Document received from: 2.2.17

Assigned to: L. FELDMAN ☐ S. HAWTHORNE ☐ C. LAGERBLOOM ☒
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM 2.2.17
(Initial/Date) ☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 2 originals to ☒ Mayor ☐ CCO Date: 2.2.17 2 to CCO 2/7/17

4) City Clerk's Office: Retains 0 original and forwards 2 originals to: Linda Blanco / 5141

Attach certified Reso # ☐ YES ☒ NO

Original Route form to CAO

Rev. 7/6/16

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made as of the last dated signature below (the "Effective Date"), by and among:

AIR PLAY ADVENTURES, LLC, a Hawaii limited liability company (the "Licensee") with a business address of 216 Dickenson Street, Lahaina, Hawaii, 96761, authorized to do business in the State of Florida

and

the CITY of FORT LAUDERDALE, a Florida municipal corporation, the "Owner", with a business address of 100 North Andrews Avenue, Fort Lauderdale, Florida 33301.

RECITALS

WHEREAS, Owner is the landowner of Snyder Park located at 3299 S.W. 4th Avenue, Fort Lauderdale, Florida 33315 (the "Facility Premises") on which Owner operates certain facilities ("The Facility"); and

WHEREAS, Licensee is an affiliate of GoZip, LLC, a Hawaii limited liability company, which is an established third party provider of zip line tours throughout the United States; and

WHEREAS, Owner and Licensee desire for Licensee to purchase, install, operate and maintain outdoor zip lines and adventure park obstacle courses along with related equipment in the above ground designated areas of the Facility Premises as described more fully in Exhibit A attached hereto (the "License Areas") and to construct certain related structure improvements within the License Areas; and

WHEREAS, Owner is willing to grant to Licensee a license to use the License Areas (as such term may be amended from time to time pursuant to this Agreement) for the purpose stated herein, subject to the terms and requirements of this Agreement.

NOW THEREFORE, based upon the foregoing recitals, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. License

Owner hereby grants to Licensee the right to operate within the License Areas only for the use stated herein and subject to the provisions and conditions of this Agreement, including the following:

(a) Zipline and Adventure Structures. During the Term (as defined below) of this Agreement, Licensee will have access to the License Areas and may install Adventure Park and Ziplines (as defined below) and all supporting equipment, structures and enclosures used solely in connection with the Adventure Park and Ziplines (collectively, the "Structures"), within the License Areas (as such term may be amended from time to time), all in accordance with the procedures set forth in this Agreement and the zoning laws, rules and regulations applicable to the Facility Premises.

(b) As used in this Agreement, the term "Adventure Park" shall mean any attraction that is aerial in nature including swings, nets, bridges, ziplines, flying foxes, freefall devices, bungee jumps, bungee swings, zipcoasters, water slides, ropes courses, challenge courses, adventure parks, Zip Stops, auto-belays, treehouses, climbing and rock walls, via ferrata type activities, chairlifts, gondolas, aerial trails, aerial bicycles, motorized ziplines, suspension bridges, cable parks, cable bridges, drop-type attractions and any other attraction installed or managed by Licensee. As used in this Agreement, the term "Zipline" shall mean an outdoor pulley suspended on a cable to be utilized for the purpose of outdoor adventure and personal amusement.

(c) Design Concept and Owner Approval. The design and number of Zipline, Adventure Park and their Structures for each Phase shall be mutually agreed upon by the parties and approved by Owner in writing, such approval not to be unreasonably withheld or delayed.

(d) Rights, Use Requirements and Restrictions.

(i) Licensee shall have the nonexclusive right to operate Adventure Park and Ziplines on the Facility Premises.

(ii) Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Areas.

(iii) Licensee's rights under this Agreement are subject to all present building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Areas or the Licensee's use of the License Areas.

(iv) Licensee may use the License Areas only for constructing, installing, operating, maintaining, and repairing the Adventure Park and Ziplines and Structures as permitted and no other use.

(v) Except for the Structures, Licensee must not install any signs in the License Areas other than required safety warning signs or any other signs as are requested or approved by Owner, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs. Owner shall not unreasonably withhold or delay approval of any signage within the License Areas provided that any such requested signage is consistent with the signage and general advertising aesthetics of the Facility as determined by Owner.

(vi) Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Areas will have on other uses of the Facility Premises.

(vii) Licensee may not remove, damage, or alter in any way any improvements or property of Owner upon the License Areas, whether currently existing or installed in the future, without Owner's prior written approval.

(viii) Licensee must repair any damage or alteration to the License Areas to the same condition that existed before the damage or alteration, which approval shall not be unreasonably withheld, conditioned or delayed.

(ix) Licensee has nonexclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Structures, which right will be so as to not unreasonably interfere with Owner operations. In the event that construction of the Structures require interference of the regular business operations of Owner or any of its third party vendors or contractors located on the Facility Premises, Owner shall make commercially reasonable efforts to provide for a construction schedule agreeable to all interested parties to permit such construction.

(e) Limitation on Use. This Agreement grants to Licensee a limited license to use the License Areas as provided herein. The parties do not by this instrument intend to create a lease, easement, or other real property interest or otherwise vest with Licensee any real property interest in the License Areas and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by Owner and fully described herein.

(f) Rights Reserved.

(i) Licensee acknowledges that its use of the License Areas is subject and subordinate to Owner's use of the License Areas. Licensee agrees that Owner's use of License Areas, including for any event held at the Facility, shall have precedence over any construction, installation and maintenance activities by Licensee. However, notwithstanding the foregoing, Owner shall use commercially reasonable efforts to provide fifteen (15) days advance written notice of any such Owner's use to the extent feasible and will in all instances provide Licensee with no less than two (2) business days' advance written notice of any such Owner's use, Owner's use will not otherwise interfere with the operation, of the Adventure Park and Ziplines, and Owner will protect and preserve Licensee's equipment and materials during such use. Owner shall be liable for any damages incurred by Licensee due to Owner's negligent use of the License Areas not caused by Licensee or any of its employees or agents.

(ii) If License Areas are installed with or shall be installed with any fire, emergency or communication equipment in or near the License Areas, the Licensee will take reasonable measures to avoid interference problems between the Structures and Owner's equipment. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of Owner's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in

use or may be in use in the future. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that causes the interference until corrective measures are taken which must be made at no cost to Owner. Owner and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem is unavoidable, Owner's right to use Owner's own equipment remains paramount to any use of the License Areas by the Licensee and Licensee has the right to terminate this Agreement without penalty. In the event that such interference does occur and the Licensee installed equipment is related to the legitimate safety need or best safety-practices of Licensee, then Owner shall make commercially reasonable for a period of thirty (30) days efforts to provide for a resolution mutually agreeable Owner, Licensee and any other interested parties to allow such equipment to remain.

(iii) Owner may, at all times, enter upon the License Areas for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Areas. Without limiting the generality of the foregoing, Owner and any furnisher of utilities and other services may, at their own cost, (A) enter upon the License Areas at any time to make repairs, replacements or alterations that, in the opinion of Owner or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Areas systems or parts, and (B) in connection with any maintenance, use the License Areas for access to other parts in and around the License Areas; provided that in the exercise of these rights of access, repairs, alterations or new construction, Owner does not unreasonably interfere with the use and occupancy of the License Areas by the Licensee, including any obstruction of or other interference or functionality of the Adventure Park and Ziplines. The exercise of any of the foregoing rights by Owner or others does not constitute an eviction of the Licensee, nor be made the grounds for any abatement of license fees, or any claim for damages. Notwithstanding the foregoing, Owner shall at all times comply with Licensee's instructions, rules and regulations relating to safety or security in, on or around any Zipline Structure of which Owner shall have been provided notice of from Licensee.

2. Term.

(a) License Period. This Agreement shall be effective as of the Effective Date, but the initial term of this Agreement shall commence on the date all required permits and approvals are obtained for the Project (the "First Date of Operation") and shall continue until the last day of the calendar month of the fifth (5th) anniversary date of the First Date of Operation (the "Term"). The Term may be extended by the Owner's exercise of its Renewal Option.

(b) Initial Construction and Approvals. Licensee must obtain all Approvals (as defined below) necessary for the installation and use of the first Zipline Structure in accordance with the specification set forth herein within twelve (12) months of the execution of this agreement or Owner shall have the right to terminate this Agreement upon thirty (30) days written notice of termination and failure of Licensee to obtain such Approvals during such thirty (30) day period.

(c) Renewal Option. Licensee reserves the right to extend this Agreement for two (2) additional five-year terms, providing all existing terms, conditions and specifications are met and the Licensee is not in Default. Licensee shall provide written notice to Owner of such election to renew no less than ninety (90) days prior to the end of the Term. In such event, the Term shall extend for a period of five (5) years from the end of the date on which the Term would have ended.

(d) **Surrender of Possession.** Upon the expiration or termination of this Agreement (exclusive of any temporary suspension of this Agreement by Owner pursuant to Section 1(e)(iii) above), the Licensee's right to occupy the License Areas and to exercise the privileges and rights granted by this Agreement automatically cease, and it must surrender and leave the License Areas in good condition, normal wear and tear excepted. Except as otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the Facility Premises (collectively, the "Equipment and Personal Property") remains the property of Licensee, and the Licensee may, at any time during the thirty (30) day period after the expiration or termination of this Agreement, remove same from the License Areas so long as Licensee is not in default of any of its obligations under this Agreement. Licensee must repair, at its sole cost, any damage caused by the removal of the Structures. Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated due to a Licensee default or in the event any property not removed by the Licensee within the thirty (30) day period set forth in this paragraph, then either, at Owner's election, (i) the Structures or all personal property shall become a part of the License Areas and ownership and title of all such property shall automatically vest in Owner, or (ii) Owner shall remove and dispose of such property and Licensee shall reimburse Owner for all cost and expense incurred in connection with such removal and disposal. Licensee shall acquire and be the lawful owner of all Equipment and Personal Property and shall not be permitted to pledge, encumber, transfer, assign or otherwise hypothecate the Equipment and Personal Property, or any portion thereof, without the prior written consent of Owner. Any such encumbrance or hypothecation shall be deemed void. This paragraph shall survive the expiration or earlier termination of this Agreement.

(e) **Hold-over.** In the event Licensee continues to occupy the License Areas after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay Owner the minimum amount of revenue share payments due to Owner in the last month of the Agreement pursuant to Section 5 hereof, with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus City shall assess a holdover penalty for City's loss of use of the property in the amount of fifty thousand dollars (\$50,000.00) and any other payment obligation, accrued during the hold-over.

3. Construction of the Structures.

(a) **Construction Conditions.** Licensee shall be solely responsible for the payment of all necessary capital, labor, materials, equipment, start-up requirements and other expenses (including, but not limited to, initial design, Adventure Ride and Zipline acquisition, installation costs, government and permit fees) to construct and install the Structures, Adventure Park and Ziplines and all ancillary or related equipment (the "Project") on the Facility Premises, in accordance with the following terms and conditions:

(i) Professionally prepared plans and drawings for the Project shall be prepared by a Florida Licensed Professional Engineer and presented to the Owner for written approval prior to the application of any required permits or approvals or prior to

the commencement of construction of the Project. Such plans and drawings will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Areas.

(ii) Licensee and any chosen subcontractors possess (or shall possess with respect to subcontractors) all qualifications, all licenses required under all applicable laws and commercially sufficient expertise required for the performance of the Project (or any Phase). The Project will be performed in a professional and workman-like manner and shall comply and observe all applicable laws, codes, rules and regulations applicable to the Project (or any Phase).

(iii) The Licensee shall be responsible for obtaining all necessary Project permits or approvals from all appropriate governmental authorities and shall be responsible for the payment of actual costs of all necessary permits or approvals (the "Approvals"). Owner agrees to provide in a timely manner all reasonable information and permissions requested by Licensee and cooperate with all reasonable requirements to obtain any necessary permits or approvals. The Licensee shall provide the Owner with copies of all such permits and approvals. No construction activities related to Structures in the License Areas may commence before all required Approvals have been obtained and the completion of all requirements of such permits. Notwithstanding the foregoing, if local laws or ordinances permit work to be performed in phases as Approvals are obtained for portions of the anticipated work, Licensee may commence construction any Phase of the construction or improvements for which Approvals have been granted provided that Licensee shall continue to diligently pursue such additional Approvals as may be necessary to complete all Phases of the anticipated construction of the Structures.

(iv) While performing any demolition, removal or construction work in connection with the Project, the Licensee shall not engage in any action (A) that constitutes a violation of any applicable law, order, ordinance, rule, regulation or code of any government authority, (B) that may cause injury to persons unless applicable safety regulations and standards are observed, (C) that may deface or injure property located on the Facility that is not subject to the Project, (D) that permits an unreasonably objectionable noise or odor to be emitted or permit anything to be done on property where the Facility is located tending to create a health, environmental or safety hazard or nuisance or cause any penalty to the Owner. The Licensee shall erect and maintain all reasonable or necessary safeguards for protection of persons and property, including safety barriers to and warnings of dangers and hazards, which safeguards and notices shall remain in place until completion of the work in accordance with this Agreement.

(v) Prior to commencement of construction and at all times during the duration of the Project, Licensee shall, at its sole expense, obtain and carry during all Builders Risk coverage construction activities in an amount to be determined by Owner. Owner shall be named additional insured on each such policy and Licensee will provide Owner with a certificate of insurance evidencing the coverage no less than five (5) days prior to the commencement of the Project for Owner review and approval. Such certificate of insurance shall provide Owner written notice of termination.

(vi) Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Areas. Licensee shall hold harmless, defend and indemnify Owner (and all of its members, shareholders, partners, principals, officers, employees and agents) from any claims, liabilities, expenses (including attorneys' fees, expenses and litigation costs), or judgments arising from Licensee's work or the Project or any other improvements or construction, including, without limitation, materials used or stored for said improvements, or the material, equipment, operations/activities of Licensee's contractors and subcontractors. Licensee shall also hold harmless, defend and indemnify Owner (and all of its members, shareholders, partners, principals, officers, employees and agents) against any and all claims, liabilities, expenses (including attorneys' fees, expenses and litigation costs) and financial losses arising from any non-compliance with state, county and federal laws, codes and permits in connection with the Project and Licensee's work.

(vii) The Licensee shall protect and preserve existing utilities on and serving the Facility and shall provide for disconnects of same as necessary. The Licensee shall preserve all Facility utilities, water distribution systems and wastewater collection systems at their respective service connections.

(viii) The Licensee shall remove all waste materials, rubbish and equipment upon completion of the Project, and shall leave the Project site in a generally orderly condition. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to Owner, at no cost to Owner, upon completion of the improvements and any changes to the same.

4. Licensee's Operations.

(a) Scope of Services. Licensee agrees, and Owner consents to Licensee (i) being the exclusive operator of the Adventure Park and Ziplines, (ii) maintaining during the Term hereof all permits, licenses or other approvals required for the operation of the Adventure Park, Ziplines and the Structures, (iii) conducting, managing and operating the Adventure Park and Ziplines at the Facility, (iv) paying for all costs, utilities and other expenses required for operation, maintenance, repair and replacement of the Project and the Structures, (v) operating and maintaining the License Areas in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times, (vi) obtaining and paying for all utilities necessary to operate the Adventure Park, the Ziplines and the Structures, and (vii) being responsible for the safe operations of the Adventure Park and Ziplines during the Term and for all safety inspections in accordance with the standards set forth by the ACCT (Association for Challenge Course Technology) and ASTM F-24 Standards for Amusement Devices as the same are amended and replaced from time to time. All of the foregoing obligations of Licensee shall hereinafter be referred to as the "Services." Use of the Licensed Area shall be limited to such uses expressly provided for in this Agreement.

(b) Personnel. At all times during the Term hereof, Licensee must at all times have on-call and at Owner's access an active, qualified, and experienced representative to supervise the Structures, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Adventure Park,

Ziplines and Structures. Licensee will provide the Owner with the names, addresses, and 24-hour telephone numbers of all such persons in writing. Licensee may elect to arrange with Owner for the use of Owner's personnel, at Owner's discretion.

(c) Utilities and Other Expenses. Licensee shall be responsible for and shall pay to Owner: (i) all charges imposed upon Owner for any increased operating expenses specifically related to the Adventure Park, Ziplines or the Structures or for services requested or used by Licensee (for example, increased electrical charges in the event separate metering for the Structures is unavailable), (ii) any amounts due imposed upon Owner as a direct result of Licensee's acts or omissions or specifically and solely charged as a result of the Structures. All such amounts shall be paid by Licensee to Owner on the first (1st) day of each month during the Term for the immediately succeeding month if such charges are recurring charges of identical amount (or within fifteen (15) days after Owner renders a bill therefore to Licensee if such charges are one-time non-recurring charges or non-identical in amount).

(d) Adventure Park and Zipline Pricing. The parties shall mutually determine the commercially reasonable pricing for the Adventure Park and Zipline attractions, and each party may request discounts to select groups and free rides, as applicable.

(e) Hours of Operation. Licensee shall provide the Services and be open to the public at the Facility Premises during the normal operating days and hours of the Facility, unless agreed to otherwise between the parties.

(f) Collection of Revenue. Licensee shall exclusively handle collection of all Attraction Gross Revenue (as defined below) from third party customers.

5. License Fees and Other Payments.

(a) Monthly License Fee Payments. Licensee shall pay to the Owner a monthly Facility Use Fee in accordance with the Table 1 below.

(b) Percentage Gross Concession Revenue. Licensee further agrees to pay the Owner a percentage of Gross Concession Revenue. The term "Gross Concession Revenue" for purposes of this Lease includes all sums charged for from retail concession items sold at the Premises. Retail concession items for sale at the Aerial Adventure course site include: goods, food or beverages, including but not limited to, t-shirts, hats, water bottles, water, sports drinks, energy bars, etc. or any other items approved for sale as a retail concession item, as outlined in Part IV – Technical Specifications/Scope of Services, Section 03.

The term "Gross Concession Revenue" excludes: any federal, state, county or city sales tax, excise tax, or other similar taxes collected by Lessee based upon sales; sales commissions; sales of merchandise or food stuffs; credit card fees; and cash received as payment in credit transactions where the extension of credit itself has already been included.

Table 1

	Monthly Facility Use Fee	Total Annual Facility Use Fee	Percentage of Gross Concession Revenue
Year 1	\$2,000.00	\$24,000.00	25%
Year 2	\$2,700.00	\$32,400.00	25%
Year 3	\$3,400.00	\$40,800.00	25%
Year 4	\$3,900.00	\$46,800.00	25%
Year 5	\$4,400.00	\$52,800.00	25%
Year 6	\$4,900.00	\$58,800.00	25%
Year 7	\$5,300.00	\$63,600.00	25%
Year 8	\$5,700.00	\$68,400.00	25%
Year 9	\$6,100.00	\$73,200.00	25%
Year 10	\$6,500.00	\$78,000.00	25%
Year 11	\$6,800.00	\$81,600.00	25%
Year 12	\$7,100.00	\$85,200.00	25%
Year 13	\$7,400.00	\$88,800.00	25%
Year 14	\$7,700.00	\$92,400.00	25%
Year 15	\$8,000.00	\$96,000.00	25%

The Annual Facility Use Fee and Percentage of Gross Concession Revenue shall be payable monthly, on or before the 15th of each month. Any partial months shall be prorated and apportioned accordingly. Lessee shall cause to be delivered to Lessor, together with Lessee's payment of monthly Facility Use Fee, a monthly report of gross revenues on which percentage concession revenue is due.

6. Florida Sales and Use Tax.

(a) Licensee shall be responsible for computing any applicable State of Florida sales and use tax, and any local option surtax which may be levied or due in connection with this Agreement or any sales to third parties in connection herewith (the "Florida Sales and Use Tax"), and for separately making any and all applicable payments of Florida Sales and Use Tax to the State of Florida (or any other applicable governmental authority) in accordance with applicable law.

(b) Licensee shall indemnify and hold Owner harmless from any and all liability or obligation related to the Florida Sales and Use Tax and shall not permit any obligation related thereto to become a lien on the Facility Premises (or any portion thereof).

7. Environmental Matters.

Licensee will not use or permit in the Facility any flammable or explosive material, toxic substances, environmentally Hazardous Materials (as defined below) or other items hazardous to persons or property. Licensee will not use the Facility in any manner that (a) invalidates or is in conflict with any fire, insurance, life, safety or other codes or policies covering the Land or the Facility, or (b) increases the rate of any fire or other insurance being maintained with respect to the Land or the Facility. If any insurance premium is higher than it otherwise would be due to Licensee's failure to comply with the provisions of this paragraph, Licensee shall reimburse Owner immediately on demand the amount constituting that part of Owner's insurance premiums that are charged because of Licensee's said failure. Licensee will not use the Facility nor permit the Facility to be used in violation of any Environmental Regulations (as defined below). Licensee assumes sole and full responsibility for, and will remedy at Licensee's sole cost, any and all such violations caused by Licensee.

(i) The term "Hazardous Materials" shall, for purposes hereof, mean: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" being "released" in "reportable quantity," as such terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) urea formaldehyde insulation; (f) "hazardous chemicals" or "extremely hazardous substances," in quantities sufficient to require reporting, registration, notification or special treatment or handling under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001, et seq.) ("EPCRA"), as amended from time to time, and regulations promulgated thereunder; (g) any "hazardous chemicals" in levels that would result in exposures greater than those allowed by permissible exposure limits established pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) ("OSHA"), as amended from time to time, and regulations promulgated thereunder; (h) any substance which requires reporting, registration, notification, removal, abatement or special treatment, storage, handling or disposal under Section 6, 7 or 8 of the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) ("TSCA"), as amended from time to time, and regulations promulgated thereunder; (i) any toxic or hazardous chemicals described in the Occupational Safety and Health Standards (29 C.F.R. 1910.1000-1047) in levels which would result in exposures greater than those allowed by the permissible exposure limits pursuant to such regulations; (j) the contents of any storage tanks, whether above or below ground; (k) medical wastes; (l) materials related to those described in subparagraphs (a) through (k) hereof; and (m) anything defined as hazardous or toxic under any now existing or hereafter enacted Environmental Regulations.

(ii) The term "Environmental Regulations" shall, for purposes hereof, mean any law, statute, regulation, order or rule now or hereafter promulgated by any governmental authority, whether local, state or federal, relating to air pollution, water pollution, noise control or transporting, storing, handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as same may be amended from time to time, including without limitation, the following: (a) the Clean Air Act (42

U.S.C. § 7401 (et seq.); (b) Marine Protection, Research and Sanctuaries Act (33 U.S.C. § 1401-1445); (c) the Clean Water Act (33 U.S.C. § 1251 et seq.); (d) RCRA, as amended by the Hazardous and Solid Waster Amendments of 1984 (42 U.S.C. § 6901 et seq.); (e) CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.); (f) TSCA; (g) the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.); (h) the Safe Drinking Water Act (42 U.S.C. § 300(f) et seq.); (i) OSHA; (j) the Hazardous Liquid Pipeline Safety Act (42 U.S.C. § 2001 et seq.); (k) the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (l) the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.); (m) EPCRA; and (n) National Environmental Policy Act (42 U.S.C. § 4321-4347); and (o) Medical Waste Tracking Act of 1988 (42 U.S.C. § 6992).

8. Termination.

(a) Termination by Owner. In addition to any other grounds for termination set forth in this Agreement, in the event Licensee shall (i) be in monetary breach or default for a period of ten (10) business days after notice of such default from Owner, (ii) have made a false representation or warranty in this Agreement, (iii) become bankrupt or insolvent, or suffer the appointment of a receiver, or make an assignment for creditors, or (iv) be in non-monetary breach or default or intentionally fail to fully and faithfully act in accordance with this Agreement for a period of thirty (30) days after notice of such default from Owner (or for a period of forty five (45) days after notice of such default from Owner in the event that such breach or default cannot be reasonably cured within such thirty (30) day period), Owner shall have the right to forthwith terminate this Agreement, hold Licensee liable for any damages resulting to Owner and all other available remedies at law and equity. Upon any such termination of this Agreement, Licensee shall comply with any request from Owner to remove of property pursuant to Section 2(d) hereof and shall cooperate in all respects with Owner in removing the Structures from the License Areas and the Facility Premises and returning the License Areas to its condition prior to construction of the Project, or at Owner's election, turning over all operations of the Structures to Owner or a successor Licensee.

(b) Termination by Licensee. In addition to any other grounds for termination set forth in this Agreement, in the event Owner shall (i) have made a materially false representation or warranty in this Agreement, or (ii) be in material breach or default or intentionally fail to fully and faithfully act in accordance with this Agreement for a period of thirty (30) days after notice of such default from Licensee (or for a period of forty five (45) days after notice of such default from Licensee in the event that such material breach or default cannot be reasonably cured within such thirty (30) day period), Licensee shall have the right to forthwith terminate this Agreement.

(c) Survival. All rights, liabilities or claims accrued, or arising out of events occurring, prior to the date of any termination of this Agreement shall survive such termination.

9. Representations, Warranties and Covenants.

(a) Owner hereby represents, warrants and covenants to Licensee that as of the Effective Date and unless otherwise set forth below, continuing throughout the Term:

(i) OWNER is a Florida municipal corporation organized and validly existing under the laws of the State of Florida. Owner is in good standing and duly qualified to conduct business in the State of Florida. Owner has full power and authority to own and operate the Facility and to carry on its business as contemplated under this Agreement.

(ii) Owner has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein. This Agreement has been duly executed and delivered by Owner and is a valid and legally binding obligation of Owner, enforceable in accordance with its terms.

(iii) Owner will at all times cooperate with Licensee's reasonable requests (not in contravention of the terms of the Agreement) in connection with the installation, operation and maintenance of the Adventure Park and Ziplines and the providing of the Services.

(iv) Owner shall be responsible for supporting the operations of the Facility and the Facility Premises, including the Licensed Area (except as otherwise provided for in this Agreement), in the normal course of the Owner's business operations.

(v) Owner shall allocate appropriate resources, within the reasonable budgetary parameters of the Facility, to marketing the Zipline attraction at the Facility to the City of Ft Lauderdale public. City shall perform the following activities related to marketing; post on Snyder Park's website, post fliers on all bulletin boards in Park and email approved flier to all City of Fort Lauderdale participants

(b) Licensee hereby represents, warrants and covenants to Owner that as of the Effective Date and unless otherwise set forth below, continuing throughout the Term:

(i) Licensee is a limited liability company organized and validly existing under the laws of the State of Hawaii and authorized to do business in the State of Florida. Within sixty (60) days of execution of this Agreement, and prior to conducting business within the State of Florida, Licensee shall have full power and authority to own its properties and to carry on its business as contemplated under this Agreement, and shall be in good standing and duly qualified to conduct business in the State of Florida.

(ii) Licensee has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein. This Agreement has been duly executed and delivered by Licensee and is a valid and legally binding obligation of Licensee, enforceable in accordance with its terms.

(iii) Licensee will at all times cooperate with Owner's reasonable requests (not in contravention of the terms of the Agreement) in connection with the operation of

the Facility. Such requests could include but are not limited to appearance of the Licensed Area, and changes resulting from customer feedback. Such requests might also include information requirements and other requests made by external audit firms involved in conducting the annual audit of the Facility and in conducting periodic audits/reviews required by banks, lessors and other like stakeholders of the Facility.

(iv) The Project and the Adventure Park and Ziplines will be inspected, on an annual basis, by an ACCT Professional Vendor Member (PVM), or on a more frequent basis if required by then applicable rules, regulation, laws or applicable safety standards for top-rated U.S. adventure ride and zipline attractions.

(v) Licensee shall: (i) post all new job listings for available positions at the Facility on the job listing bulletin board located at the Facility prior to filling any such new vacancy and provide notice to Owner of any such new job opening, and (ii) provide personnel reports to Owner on a quarterly basis (or upon request from Owner at any time) with full personnel background information and other personnel data and information as may be necessary for Owner to comply with any municipal job creation programs which it may be a party to.

10. Books and Records and Reporting.

Revenue Reporting. Within ten (10) business days of each periodic license fee payment, Licensee shall provide Owner a written statement (each, a “Periodic Statement”) of revenues during the preceding monthly period. The Monthly Statement shall include monthly Attraction Gross Revenues categorized by Gross ticket sales and Gross Retail Sales.

(a) **Annual and Periodic Reporting.** On or before December 1 of each calendar year during the Term, Licensee shall submit to Owner: (i) an annual business plan and forecast for the upcoming calendar year for its operations on the Facility and make to Owner a presentation for the upcoming calendar year outlining its business plan and review of the proposed operating budget for the upcoming year (each, an “Annual Statement”). The Annual Statement shall include a full audit report and financial statements with respect to Licensee and this Agreement issued by a “Big Four” accounting firm or reputable regional accounting firm acceptable to Owner setting forth the income and expense calculations related to Licensee’s operations on the Facility.

(b) **Additional Information.** Licensee shall deliver to Owner such additional documents, financial statements, tax returns, management reports and other information, with supporting data relating to the management, maintenance and operation of the Adventure Park and Ziplines, as Owner may from time to time reasonably request.

(c) **Inspection and Audit.** Upon request, Owner may inspect Licensee’s business and financial records relating to the Adventure Park, Ziplines and the Services. Any such inspection and audit shall be performed during normal business hours, upon reasonable notice to Licensee, at mutually agreed times, and without disruption to Licensee’s business. City reserves a right to audit any books or records of Licensee during the term of the Agreement.

11. Insurance.

During the term of this Agreement, Licensee at its sole expense, shall provide insurance of such a type and with such terms and limits as noted below. Providing and maintaining adequate insurance coverage is a material obligation of Licensee. Licensee shall provide the City a certificate of insurance evidencing such coverage. Licensee's insurance coverage shall be primary insurance as respects to the City for all applicable policies. The limits of coverage under each policy maintained by Licensee shall not be interpreted as limiting Licensee's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of A-, VII or better, subject to the approval of the City's Risk Manager.

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

As a condition precedent to the commencement of the construction of the Project, the following insurance policy is required:

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 maximum deductible of \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause
- Guaranteed policy extension provision
- Waiver of Occupancy Clause endorsement (allow City the City to occupy the facility under construction/renovation)
- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment.

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name the City as a loss payee. This insurance shall remain in effect until the Work is completed.

The following insurance policies are required on an ongoing basis:

Commercial General Liability

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

- \$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 political subdivision of the State of Florida, 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 arising out of activities performed by or on behalf of the Licensee. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

Business Automobile Liability

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

If the Licensee does not own vehicles, the Licensee 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.

Workers' Compensation and Employer's Liability

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes

Employers' Liability - \$500,000

Any firm performing work 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.

Licensee must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Licensee 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 Agreement.
- b. The Licensee shall provide a Certificate of Insurance to the City with 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 the Licensee 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 Agreement term goes beyond the expiration date of the insurance policy, the Licensee shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
- f. The City shall be named as an Additional Insured with a Waiver of Subrogation.
- g. The Agreement, Bid/Contract number event dates, or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

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

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

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

The Licensee's insurance coverage shall be primary insurance as respects to the City, a political subdivision of the State of Florida, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of Licensee's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by the Licensee that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

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

All notices of any claim/accident (occurrences) associated with work being performed under this Agreement, shall be provided to the Licensee's insurance company and the City's Risk Management office as soon as practicable.

13. IT IS THE LICENSEE'S RESPONSIBILITY TO ENSURE THAT ALL SUB-APPLICANTS COMPLY WITH THESE INSURANCE REQUIREMENTS. ALL COVERAGES FOR SUBCONTRACTORS SHALL BE SUBJECT TO ALL OF THE REQUIREMENTS STATED HEREIN. LICENSEE FURTHER CONFIRMS THAT LICENSEE'S INSURANCE WILL APPLY AS EXCESS OVER ANY OTHER VALID AND COLLECTIBLE COVERAGE OF THEIR VENDORS. ANY AND ALL DEFICIENCIES ARE THE RESPONSIBILITY OF THE LICENSEE.

(a) Licensee shall hold harmless, defend and indemnify Owner (and all of its members, shareholders, partners, principals, officers, contractors, employees and agents), at Licensee's expense, counsel being subject to Owner's approval, from any and all losses, penalties, fines, damages, claims, liabilities, expenses (including attorneys' fees, expenses and litigation costs), or judgments arising from the Services, the Adventure Park and Ziplines or the Structures or in connection with or arising, directly or indirectly, out of any act or omission by the Licensee or by any officer, employee, agent, invitee, or subcontractor of the Licensee, including, without limitation, the following: (i) any accident, injury or damages whatsoever caused to any person or to the property of any person and occurring during the Term in or about the Licensed Area and all other portions of the Facility Premises resulting from or in connection with the Adventure Park and Ziplines, the Structures or the Services, (ii) any accident, injury or damage occurring outside of the Licensed Area or other portions of the Facility Premises used or occupied by Licensee, but anywhere within or about the Facility Premises, where such accident, injury or damage results or is claimed to have resulted from an act, omission or negligence of Licensee or Licensee's related parties, (iii) any environmental claim relating in any way to Licensee's operation or use of the Licensed Area or any portion of the Facility, (v) any mechanic's or other lien or encumbrance or any action or proceeding brought thereon based upon any alteration or other work or services performed by or for Licensee, (vi) any non-compliance with state, county and federal laws, codes and permits in connection with the Services, the Adventure Park and Ziplines or the Structures, and (vii) any worker compensation, benefit-related or employment-based claim brought by any Licensee employee or other Licensee related party. This paragraph shall survive expiration or any termination of this Agreement.

14. Notices.

All notices, consents, approvals and requests required or permitted under this Agreement shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) upon delivery, if delivered in person, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, or (d) email transmission provided that such email notice must also be delivered by one of the means set forth in (a) or (b) above, addressed to the parties as follows:

If to Owner:

Lee R. Feldman, City Manager
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301
Phone: (954) 828-5959

With a required copy to:

Cynthia A. Everett, City Attorney
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301
Phone: (954) 828-7452

If to Licensee:

Air Play Adventures, LLC
216 Dickenson Street
Lahaina, Hawaii, 96761
Attn: Todd Domeck
Email: todd@gozipus.com

With a required copy to:

Merchant Horovitz LLC
2145 Wells Street, Suite 303
Wailuku, Hawaii 96793
Attn: Peter A. Horovitz
Email: pah@mhmaui.com

A party receiving a notice which does not comply with the technical requirements for notice under this Section may elect to waive any deficiencies and treat the notice as having been properly given. A notice shall be deemed to have been given: (a) in the case of hand delivery, at the time of delivery; (b) in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; (c) in the case of expedited prepaid delivery upon delivery; or (d) in the case of email, upon receipt of answerback confirmation, provided that such email notice was also delivered as required in this Section.

15. Relationship of the Parties.

(a) Licensee's relationship with Owner is that of an independent contractor and Licensee, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Neither Licensee nor its employees are entitled to any of the benefits that Owner provides for its employees. Any person performing work under this Agreement on behalf of the Licensee shall at all times be under Licensee's exclusive direction and control. Licensee shall pay all wages, salaries and other amounts due such personnel in connection with their performance as an employee of Licensee as required by law. The Licensee shall be responsible for all reports and obligations respecting such persons, including, but not limited to, social security taxes, income tax withholding, unemployment insurance and workers' compensation. The Licensee's performance of services and hours worked shall be entirely within the Licensee's control, and the Owner shall rely upon the Licensee to devote the time reasonably necessary to perform in accordance with this Agreement.

(b) Owner shall not be responsible for covering Licensee under any workers' compensation insurance or unemployment compensation insurance plans. Licensee represents and warrants that it is covered by a workers' compensation insurance policy procured and paid for by it. Licensee shall notify Owner immediately if the status of said coverage, notice or sole proprietorship changes.

(c) The Licensee and its employees or agents shall have no authority or right to obligate Owner in any way. The Licensee shall identify itself as an independent contractor and shall not hold itself out as an employee or agent of Owner. Owner and its employees or agents shall have no authority or right to obligate Licensee in any way, and Owner shall not hold itself out as an employee or agent of Licensee.

(d) Except as otherwise specifically set forth in this Agreement, the parties agree that this is not an exclusive contract and that the parties are free to enter into agreements and contracts for similar or other services with other parties during the Term of this Agreement.

16. General Provisions.

(a) No Assignment. Licensee shall not assign, subcontract or otherwise transfer any interest under this Agreement to any individual or entity, without the prior written consent of Owner. Any such assignment shall be voidable by Owner and grounds for immediate termination of this Agreement. Notwithstanding anything to the contrary herein, Owner shall be permitted but not obligated, without prior consent, to assign this Agreement in its entirety if it sells, leases, or otherwise transfers substantially all of its ownership rights in Owner or the Facility Premises; provided, however, that if Owner sells, leases, or otherwise transfers substantially all of its ownership rights in the Facility Premises, but does not retain any rights in and to the License Areas, it shall either assign this Agreement to the new owner of the Facility Premises or cease to receive any further payments from Licensee in which event this Agreement shall be deemed terminated.

(b) Retention of Records. Licensee shall preserve and make available, at reasonable times for examination and audit by Owner in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by Owner to be applicable to

Licensee's records, Licensee shall comply with all requirements thereof; however, Licensee shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Owner's disallowance and recovery of any payment upon such entry. The Licensee shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

(c) Public Entity Crime Act. Licensee represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on

the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Owner, may not submit a bid on a contract with Owner for the construction or repair of a public building or public work, may not submit bids on leases of real property to Owner, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Owner, and may not transact any business with Owner in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by Owner pursuant to this Agreement, and may result in debarment from Owner's competitive procurement activities.

(d) Licensee represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services. Licensee shall perform Licensee's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Licensee's performance and all interim and final product(s) provided to or on behalf of Owner shall be comparable to the best local and national standards.

a. In the event Licensee engages any subcontractor in the performance of this Agreement, Licensee shall ensure that all of Licensee's subcontractors perform in accordance with the terms and conditions of this Agreement. Licensee shall be fully responsible for all of Licensee's subcontractors' performance, and liable for any of Licensee's subcontractors' non-performance and all of Licensee's subcontractors' acts and omissions. Licensee shall defend at Licensee's expense, counsel being subject to Owner's approval or disapproval, and indemnify and hold Owner and Owner's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Licensee's subcontractors for payment for work performed for Owner by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Licensee's subcontractors or by any of Licensee's subcontractors' officers, agents, or employees. Licensee's use of subcontractors in connection with this Agreement shall be subject to Owner's prior written approval, which approval Owner may revoke at any time.

(e) Conflicts. Neither Licensee nor any of Licensee's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is

substantially antagonistic or incompatible with Licensee's loyal and conscientious exercise of judgment and care related to Licensee's performance under this Agreement.

(f) Licensee further agrees that none of Licensee's officers or employees shall, during the term of this Agreement, serve as an expert witness against Owner in any legal or administrative proceeding in which he, she, or Licensee is not a party, unless compelled by court process. Further, Licensee agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Owner in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Licensee or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Licensee is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Licensee agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Licensee.

(g) **Schedule and Delays.** Time is of the essence in this Agreement. By signing, Licensee affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the Owner directs.

(h) **Materiality and Waiver of Breach.** Owner and Licensee agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

Owner's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

(i) **Compliance With Laws.** Licensee shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Licensee's duties, responsibilities, and obligations pursuant to this Agreement.

(j) **Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

(k) Limitation of Liability. The Owner desires to enter into this Agreement only if in so doing the Owner can place a limit on the Owner's liability for any cause of action for money damages due to an alleged breach by the Owner of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Licensee hereby expresses its willingness to enter into this Agreement with Licensee's recovery from the Owner for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the Owner to Licensee pursuant to this Agreement.

a. Accordingly, and notwithstanding any other term or condition of this Agreement, Licensee hereby agrees that the Owner shall not be liable to Licensee for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the Owner to Licensee pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon Owner's liability as set forth in Section 768.28, Florida Statutes.

(l) Jurisdiction, Venue, Waiver, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

(m) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or Owner Manager, as determined by Owner Charter and Ordinances, and Licensee or others delegated authority to or otherwise authorized to execute same on their behalf.

(n) Prior Agreements. This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

(o) Payable Interest. Except as required and provided for by the Florida Local Government Prompt Payment Act, Owner shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Licensee waives, rejects, disclaims and surrenders any and all entitlement it has or may

have to receive interest in connection with a dispute or claim based on or related to this Agreement.

(p) Uncontrollable Circumstances ("Force Majeure"). The Owner and Licensee will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the Owner may excuse performance for a longer term. Economic hardship of the Licensee will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

(q) 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," the Licensee certifies that it is 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 (2016), 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 (2016), as may be amended or revised. The Owner may terminate this Agreement at the Owner's option if the Licensee is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2016), 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 (2016), 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 (2016), as may be amended or revised.

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IN WITNESS WHEREOF, Licensee and Owner have caused this Agreement to be executed by their respective, duly authorized representatives, all as of the Effective Date.

WITNESSES:

Jeanette A. Johnson
Jeanette A. Johnson
[Witness print or type name]

[Signature]
Carla Foster
[Witness print or type name]

CITY OF FORT LAUDERDALE

[Signature]
John P. "Jack" Seiler, Mayor

[Signature]
Lee R. Feldman, City Manager
FOR

ATTEST:

[Signature]
Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM
Cynthia A. Everett, City Attorney:

[Signature]
Cole Copertino,
Assistant City Attorney

WITNESSES:

Mary Britton

[Witness Signature]

Mary Britton

[Witness print/type name]

K. Zablan

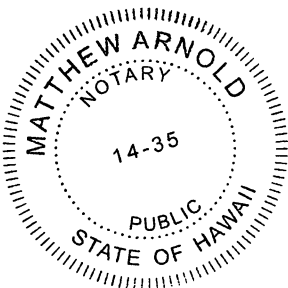
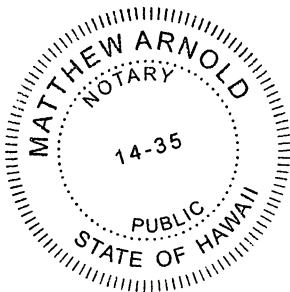
[Witness Signature]

Katherine Zablan

[Witness print/type name]

STATE OF HAWAII)
) SS
COUNTY OF MAUI)

The foregoing instrument was acknowledged before me this 16 day of JANUARY, 2018, by Todd Domeck, Managing Member of AIR PLAY ADVENTURES, LLC, a Hawaii limited liability company, authorized to do business in Florida, who freely and voluntarily executed this instrument on behalf of said company. Who is personally known to me or has produced as identification or is known to me personally.



LICENSEE:

AIR PLAY ADVENTURES, LLC, a
Hawaii limited liability company,
authorized to do business in Florida

By: Todd Domeck

Todd Domeck
[print name] as Managing Member

Matthew Arnold
Notary Public

MATTHEW ARNOLD
Typed, printed, stamped name of Notary
Public

My Commission Expires:
FEB 16 2018

Doc. Date: 1/16/17 # Pages: 21
Notary Name: Matthew Arnold Second Circuit
Doc. Description: LICENSE AGREEMENT
Matthew Arnold 1/16/17
Notary Signature Date