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MASTER LEASE AGREEMENT

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

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

and

RAHN BAHIA MAR, L.L.C., a Delaware limited liability company, hereinafter referred to and identified as the “LESSEE.”

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

PREAMBLE

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

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

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

WHEREAS, the parties mutually agree that as of the Commencement Date, this Lease replaces in its entirety the Original Lease which shall be deemed terminated in its entirety (subject to the provisions of Section 32.1 of this Lease) as of the Commencement Date of this Lease; and

WHEREAS, LESSEE will, prior to the Commencement Date, obtain the consent of its then existing Leasehold Lender, if any, consenting to the execution of this Lease; and

WHEREAS, by Resolution No. _____ adopted at its meeting of _____, 20__ [the date of City Commission Approval], the City Commission of LESSOR authorized the

Original Lease to be ~~amended~~terminated and ~~restated as set forth in~~replaced with this Lease upon the Commencement Date, and the future execution of one or more Phased Leases in the manner provided herein, and additionally, granted the conditional extension rights specified in each (“**City Commission Approval**”); and

WHEREAS, LESSEE shall have the right to have portions of the Premises developed as individual parcels which uses may include residential dwelling units, offices, hospitality (including hotel, marina, and/or restaurants), retail spaces, open spaces, and other improvements and appurtenances located therein as such building areas are shown in the Site Plan as amended from time to time. In connection with such development of a residential building (which may contain any one or more of such uses) and pursuant to the terms of this Lease, upon LESSEE’s written request to LESSOR, a separate Phased Lease will be entered into for the development and operation of each such portion of the Property.

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

ARTICLE 1 **PREMISES**

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

Section 1.2 Adjustments. The legal descriptions for each Phased Parcel are coterminous with the current area planned for the Phased Building(s) (including structural components, to the extent applicable) to be located thereon as contemplated by the Site Plan. The current legal description for the Premises includes each of the Phased Parcel(s), and will be adjusted (a) to omit the legal descriptions for each of the Phased Parcel(s) as and when necessary for the Phased Lessee to develop and own the Phased Building(s) to be located within each such Phased Parcel under a Phased Lease; and/or (b) pursuant to the terms of this Lease. The parties hereby recognize that the legal description of the Premises is presently shown on **Exhibit A** and the general area of each Phased Parcel shall be up to four (4) Phased Parcels (other than the Branded Hotel Parcel) plus any Phased Parcel which is a Branded Hotel Parcel, all to be generally located within the seven (7) areas presently shown on **Exhibits B-1 through B-7**, inclusive. On or before entering into each Phased Lease, LESSEE shall prepare and submit to the City Manager for approval a legal description for such Phased Parcel as follows: (i) for each of the four (4) Phased Parcels (other than the Branded Hotel Parcel) to be leased pursuant to such Phased Lease, which legal shall be for the ground upward as to the area extending 5’ beyond the outside boundary of the building pad of such Phased Building(s) (including structural components to the extent applicable) (each the “**Base Portion**”) and the air rights from an elevation specified above the ground surface as to those portions of such Phased Building(s) that overhang beyond the Base Portion, all as generally shown on **Exhibits B-1 through B-7**, inclusive and (ii) as to the Branded Hotel Parcel, the Branded Hotel Parcel shall be located ~~with~~within the Hotel and the legal description of such Branded Hotel Parcel shall be as set forth in the Hotel Declaration (including its structural components to the extent applicable) as approved by the City Manager. Such legal

description of each Phased Parcel including the air rights related thereto (each a “**Legal Description**”) shall be subject to approval ~~as~~ by the City Manager. Such legal description for each such Phased Parcel as approved by the City Manager, which approval shall not be unreasonably denied, withheld, delayed or conditioned shall be the “**Approved Legal Description**” and shall be deemed a Permitted Change. The Approved Legal Description may need to be adjusted from time to time so as to be conterminous with the actual area of such Phased Building(s) intended to be constructed upon such Phased Parcel based upon (i) actual field measurements (for nominal adjustments); or (ii) revisions to the Site Plan as approved by applicable governmental authorities, and that such adjustments will necessarily cause some adjustments to the legal description of the Premises and possibly, other adjoining Phased Parcels. To the extent that LESSEE determines that the area needed to comprise a Phased Parcel for such Phased Building(s) needs to be modified or otherwise adjusted as a result of Governmental Approvals or other reasons affecting such legal description, then LESSEE will prepare a written request to the City Manager for a modification, which shall include a sketch reflecting the modification, along with the revised sketch and legal description for the Phased Parcel and corresponding changes to the sketch and legal description of the Premises (“**Revised Legal Description**”) which Revised Legal Description shall be subject to the review and approval by the City Manager which approval shall not be unreasonably denied, withheld, conditioned, or delayed. Upon City Manager’s approval of such Revised Legal Description (w) such Revised Legal Description shall become the Approved Legal Description for both the legal description of the applicable Phased Parcel and the legal description of the Premises; (x) the Revised Legal Description shall be a Permitted Change; (y) the City and LESSEE will execute and record any applicable modification to the Memorandum of Lease with respect to this Lease; and (z) the Phased Lease leasing the Phased Parcel to the applicable Phased Lessee shall be modified to reflect such Approved Legal Description. In the event of a request for a modification of the legal description for any Phased Parcel, then prior to submitting such request to LESSOR, such request shall be signed by LESSEE and the applicable Phased Lessee for such Phased Parcel.

Section 1.3 Phased Lease. Provided that LESSEE is current and in good standing under this Lease at the time of the request, LESSEE may request, at any time and from time to time, that LESSOR enter into one or more Phased Leases with Phased Lessee(s) whereupon (i) within thirty (30) days after such request, LESSOR will execute the applicable Phased Lease with the Phased Lessee leasing a Phased Parcel to the Phased Lessee and simultaneous therewith, such Phased Parcel shall be removed as a portion of the Premises; and (ii) simultaneous with the execution of such Phased Lease (a) the Phased Parcel shall be leased by the City to the Phased Lessee in accordance with the terms of the applicable Phased Lease; and (b) taxes and operating expenses with respect to such Phased Parcel for the year of the execution of such Phased Lease shall be prorated between LESSEE and such Phased Lessee with such Phased Lessee being responsible for all obligations and taxes with respect to such Phased Parcel going forward.

Section 1.4 Bridge. LESSOR, as owner of the Bridge, and LESSEE have entered into the Bridge Agreement, whereby LESSEE shall have the rights and shall be responsible to perform LESSEE’s obligations under such Bridge Agreement.

Section 1.5 ~~Amendment and Restatement.~~ This Replacement. Upon the Commencement Date, this Lease ~~amends~~replaces and ~~restates~~supersedes the Original Lease in its

entirety. To the extent of any inconsistency between the terms of the Original Lease and the terms of this Lease, the terms of this Lease shall supersede and control.

ARTICLE 2

MUTUAL REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

ARTICLE 3

DEFINED TERMS

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

"**Act**" shall mean Chapter 718, Florida Statutes as such Chapter may be amended or replaced as of the time of submitting the Unit to the Act.

"**Additional Rent**" shall mean all monetary obligations of LESSEE to LESSOR (other than Base Rent) payable pursuant to this Lease.

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

“Applicable Percentage” shall mean as to the Premises only:

(a) During each Lease Year of the Term, 4.25% of Hotel Gross Revenue derived from the Premises until the Start Date, whereupon the Applicable Percentage shall be reduced to 3.75% of Hotel Gross Revenue from the Start Date until the Completion Date, at which time the Applicable Percentage of Hotel Gross Revenue shall be increased back up to 4.25% of Hotel Gross Revenue.

(b) During each Lease Year of the Term, 4.25% of Retail/Office Gross Revenue derived from the Premises until the Start Date, whereupon the Applicable Percentage shall be reduced to 3.75% of Retail/Office Gross Revenue from the Start Date until the Completion Date, at which time the Applicable Percentage of Retail/Office Gross Revenue shall be increased to 5% of Retail/Office Gross Revenue.

(c) During each Lease Year of the term, 4.25% of Marina Gross Revenue derived from the Premises until the Start Date, whereupon the Applicable Percentage will be reduced to 3.75% of Marina Gross Revenue from the Start Date until the Completion Date, at which time the Applicable Percentage for Marina Gross Revenue shall be increased to 5.75% of Marina Gross Revenue.

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

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

“Assignment” shall have the meaning set forth in Section 22.1.

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

“Bahia Mar Complex” shall mean the Property.

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

“Base Rent” shall be the following, to wit:

(a) Commencing on the Commencement Date and through September 30, 2065, the Base Rent shall be Six Hundred Thousand Dollars (\$600,000.00) per Lease Year.

(b) For the Lease Year commencing October 1, 2065 and each Lease Year thereafter, the Base Rent shall be Seven Hundred Fifty Thousand Dollars (\$750,000) per Lease Year.

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

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

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

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

“Branded Apartment Units” shall mean the residential dwelling unit(s) located on a Phased Parcel.

“Branded Hotel Parcel” shall mean that at such time as ~~Lessee~~LESSEE desires to provide for the creation of the Branded Hotel Units within the Hotel then the ~~Lessee~~LESSEE shall record a Hotel Declaration to create an air rights parcel containing the Branded Hotel Units and such air rights parcel shall be the Branded Hotel Parcel.

“Branded Hotel Unit Owner” shall mean the owner of each Branded Hotel Unit after submitting such Branded Hotel Parcel to the Act.

“Branded Hotel Unit(s)” shall mean each hotel room, if any, within the Branded Hotel Parcel which is submitted to the Act making each such hotel room a separate Unit.

“Bridge” shall mean the pedestrian bridge over State Road A-1-A which provides pedestrian access to/from Fort Lauderdale beach on the east side of State Road A-1-A over State Road A-1-A to the boundary of the Premises on the west side of State Road A-1-A, which may be utilized by LESSEE for access for such persons as LESSEE designates from time to time and for such other lawful uses designated by LESSEE and as permitted by the Bridge Agreement.

“**Bridge Agreement**” shall mean that certain easement agreement between LESSOR and Rahn Bahia Mar Walkway LLC its successors and assigns (“**Grantee**”) dated August 31, 2020 with respect to the Bridge, as same may be amended from time to time.

“**Capital Improvement Requirements**” shall have the meaning set forth in Section 37.2 of this Lease.

“**Capital Improvements**” shall mean all capital improvements pursuant to generally acceptable accounting principles.

“**CIRA**” or “**Capital Improvement Reserve Account**” shall have the meaning set forth in Section 37.2.

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

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

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

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

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

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

“**Concessions**” shall mean and refer to minor or incidental sales of goods or services to Hotel and Marina guests provided by Non-Affiliated Persons. The source of revenue referred to in the definition of Gross Revenues (a)(v) shall not be deemed to constitute Concessions.

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

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

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

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

“**Environmental Assessment**” shall have the meaning set forth in Section 7.8 of this Lease.

“Environmental Procedure” shall have the meaning set forth in Section 7.8 of this Lease.

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

“Estoppel Statements” shall have the meaning set forth in Section 38.18.

“Excess Capital Improvement Amount” shall have the meaning set forth in Section 37.2 of this Lease.

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

“Existing Leasehold Loan(s)” shall mean the leasehold loans existing as of the Effective Date as set forth on Exhibit L-1 attached hereto.

“Existing Subleases” shall mean the subleases between LESSEE and its subtenants existing as of the Effective Date as set forth on Exhibit L-2 attached hereto.

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

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

- (i) Within ten (10) business days after the failure of LESSOR and LESSEE to agree on the Fair Market Value Rent for such lease, LESSOR shall appoint an MAI appraiser having at least ten (10) years’ experience appraising commercial property in the Broward County area that has not performed appraisal services for LESSOR in the last five (5) year period prior to such determination (**“LESSOR Appraiser”**) and LESSEE shall appoint an MAI appraiser having had at least ten (10) years’ experience appraising commercial property in the Broward County area who has not performed appraisal services for LESSEE within the five (5) year period prior to such determination (**“LESSEE Appraiser”**). In the event either LESSOR or LESSEE fails to timely appoint such MAI appraiser, then the MAI appraiser of the Party who timely appoints its MAI appraiser shall, acting alone, determine such Fair Market Value Rent. Within thirty (30) days of the appointment of the LESSOR

Appraiser and/or LESSEE Appraiser, the LESSOR Appraiser and LESSEE Appraiser shall each submit their determination of the Fair Market Value Rent in question. In the event either Party's MAI appraiser fails to provide its determination of Fair Market Value Rent within such thirty (30) day period, then the Fair Market Rent of the MAI appraiser who timely provides its determination of Fair Market Rent shall be deemed to be the Fair Market Value Rent. If neither Party timely appoints its MAI appraiser or the applicable MAI appraiser(s) fails to timely provide its determination of Fair Market Value Rent, then the Parties shall again restart the process to determine Fair Market Value Rent. To the extent that the Fair Market Value Rent as determined by the LESSOR Appraiser and LESSEE Appraiser are within ten percent (10%) of each other, the Fair Market Value Rent shall be the average of the Fair Market Value Rent as determined by the LESSOR Appraiser and LESSEE Appraiser.

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

"Force Majeure Event" shall mean any of the following occurring in or directly impacting Broward County, Florida: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation

services; (k) shortage of any material or commodity, which is not due to LESSEE's failure to appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; or (n) any other acts outside the control of LESSEE. Notwithstanding anything to the contrary herein, failure to secure or retain financing shall not be deemed a Force Majeure Event.

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

“Gross Revenue” means:

(a) Except as specifically provided below, the total of all revenues, rents, income and receipts received by LESSEE from any Person(s) whomsoever (less any refunds) of every kind derived directly or indirectly from the operation of the Premises, including, without limitation, income (from both cash and credit transactions and before commissions) from the following activity on the Premises:

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

(ii) Boat slips, and dockage fees, together with all revenues ancillary thereto (except fuel which shall be included as set forth in (a) (viii) below);

(iii) Food, beverage (including alcoholic beverages sold by the drink or bottle), convention and banquet sales, including room service, and sales from vending machines provided that in room mini-bars shall be calculated on a net basis, wherein net mini-bar revenues shall be defined as gross mini-bar revenue, less any lease payment made by LESSEE to a Person, with such net basis being subject to the Limitation on Net Income Rule and subject to the terms of subsection (c)(ii), where applicable, whereby the rent under any such food and beverage lease/concession agreement/management agreement will be included in Gross Revenue but Gross Revenues will not include the food and beverage sales received by the operator;

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

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

(vi) Personal services, laundry services;

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

(viii) Wholesale and/or retail sales of fuel (provided that the percentage of annual Gross Revenue shall be calculated only against “net fuel sales” which shall be the gross fuel sales, less the cost of fuel and applicable taxes on such fuel, where the cost of fuel is no greater than the cost in a good faith arm’s length purchase from a wholesale distributor and where such “net fuel sales” formula shall be subject to the Limitation on Net Income Rule);

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

(x) Commissions from fuel vendors coming upon the Premises to fuel vessels;

(xi) LESSEE’s portion of any eminent domain award which is awarded to LESSEE, in excess of the aggregate of (1) any such proceeds which are reinvested in the Premises; (2) the fair market value of LESSEE’s equity in the portion of the Premises which is taken; and (3) the amount, if any, used to pay any Leasehold Mortgagee whose mortgage encumbers the portion of the Premises that is taken.

(b) Gross Revenue shall not include (“**Excluded Revenue**”):

(i) Gratuities received by employees;

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

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

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

(v) Proceeds from the disposition of personal property (such as furniture, fixtures and equipment no longer necessary for the operation of the Premises);

- (vi) Interest income, if any;
- (vii) Deposits until same are forfeited by the person making the deposit;
- (viii) Advance rentals until such time that they are earned;

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

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

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

(c) Notwithstanding anything contained herein to the contrary, Gross Revenues, for purposes of computing Gross Revenue, shall be deemed to be (i) with respect to subleased space (except with respect to a Sublease of the Marina which is addressed in (c)(iii) below), an amount equal to the rent paid by the Sublessee to LESSEE if the Sublessee is not an Affiliate of LESSEE, or if the Sublessee is an Affiliate of LESSEE, then the amount of rent paid by such Sublessee to LESSEE, provided the actual rent payable under such Sublease shall be required to be the Fair Market Value Rent for such space; (ii) with respect to any food and beverage operation conducted upon the Premises by an Affiliate of LESSEE, then the rent payable under such food and beverage lease/concession agreement/management agreement shall be an amount equal to the Fair Market Value Rent for such food and beverage operation, provided however, that in connection with determining Fair Market Value Rent for the food and beverage operations for the initial ten (10) years of this Lease, such amount shall be calculated on terms substantially similar to the amount of rent that was previously paid to LESSEE prior to the execution of this Lease in connection with the food and beverage operation conducted on the Premises by a non-affiliate of LESSEE; and (iii) with respect to the Sublease of the Marina, the Gross Revenue under this Lease with respect to the Marina portion of the Premises shall be the Marina Gross Revenue for such Sublease of the Marina received by such Sublessee and LESSEE shall act as collection agent for the Applicable Percentage of Gross Revenue derived by such Sublessee of the Marina which is paid to LESSEE by such Sublessee of the Marina; provided however, Gross Revenue of LESSEE shall not include the Percentage Sum paid by the Sublessee to LESSEE under the portion of the Sublease applicable to the Marina to the extent such Percentage Sum was collected by LESSEE and paid to LESSOR as set forth above.

(d) In the event that additional or new revenue-producing space or sources are created upon the Premises or in the event that LESSEE, directly or indirectly, subsequently converts any space from the functions set forth in subsection (a) of this definition of Gross Revenue, to other legitimate business functions, then and in those events the Gross Revenue derived from such space

or uses by LESSEE shall be included in the Gross Revenue for calculation of the annual Percentage Sum, subject to the other provisions in this definition of Gross Revenue.

“Hazardous Substances” means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated by any Environmental Agency, including, without limitation, any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated byphenyls; (iv) radon; (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et. seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903); (vii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et. seq. (42 U.S.C. Section 9601); or (viii) designated as a "hazardous substance" as defined in Chapter 403 (Part IV) of the Florida Statutes.

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

“Hotel” shall mean any hotel located on the Premises (as same may be modified, replaced, and/or newly constructed on the Premises as permitted by the Site Plan from time to time).

“Hotel Declaration” shall mean declaration prepared by LESSEE and subject to the approval by the City Manager, which approval shall not be unreasonably withheld, denied or delayed. After such approval, LESSEE shall record such Hotel Declaration in the public records of Broward County Florida as a covenant running with the land. The Hotel Declaration shall among other matters: (i) create the Branded Hotel Parcel which shall contain the hotel rooms to be made Branded Hotel Units; (ii) provide for cross easements for ingress, egress, access, parking, utilities, lateral support, etc.; (iii) provide for the Branded Hotel Parcel to pay its pro rata share (based on square footage) of common area charges with respect to the Hotel; (iv) provide for repair and maintenance of the common areas of the Hotel; and (v) such other matters generally contained within air rights declarations as determined appropriate by LESSEE.

“Hotel Gross Revenue” shall mean Gross Revenue derived from Hotel Operations on the Premises (excluding Gross Revenues derived by the Branded Hotel Unit Owner from any Branded Hotel Unit) as determined under the Uniform Systems of Accounts for Hotels as adopted by the American Hotel Association of the U.S. and Canada, as amended from time to time, provided such Gross Revenues shall be subject to the provisions and exclusions relating to Gross Revenue set forth in the definition of Gross Revenue in this Lease.

“**Hotel Improvements**” shall mean the hotel (and any related, auxiliary, and/or ancillary improvements) located on the Premises (as same may be modified from time to time), including any Branded Hotel Unit.

“**Hotel Operations**” shall mean the operation of any Hotel on the Premises which operations shall include Special Functions.

“**Hotel Standards**” shall be as set forth in Section 18 of this Lease.

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

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

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

“**Lease Year**” means the period from October 1 through the following September, provided if the Commencement Date is not on October 1, then the first Lease Year shall be from the Commencement Date through the following September 30 (“**Partial Lease Year**”) and Rent payable for such Partial Lease Year shall be prorated based on a 365 day year.

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

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

“**Leasehold Mortgagee Assignee**” means the assignee of a Leasehold Mortgagee as to the leasehold interest represented by this Lease following the acquisition of such leasehold interest by the Leasehold Mortgagee by virtue of a foreclosure action or deed-in-lieu of foreclosure or similar proceeding.

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

“**LESSEE**” shall mean Rahn Bahia Mar, LLC, a Delaware limited liability company, and successors and assigns to the extent approved by LESSOR, if required under this Lease.

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

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

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

“**LESSOR’s Tests**” shall have the meaning set forth in Section 7.6 of this Lease.

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

“**Marina**” shall mean the marina shown on the Site Plan included as a portion of the Premises (as same may be amended from time to time).

“**Marina Gross Revenue**” shall mean the Gross Revenue from leasing slip/dock space and other operating revenue derived from the Marina.

“**Marina Standards**” shall have the meaning set forth in Section 18.1.7.

“**Master Declaration**” shall have the meaning set forth in Section 38.2.

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

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

“**Non-Affiliated Persons**” shall mean a Person or Persons who are not direct Affiliates of LESSEE.

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

“**Original Lease**” shall mean that certain Lease dated September 1, 1962, recorded in Official Records Book 2870, at Pages 530-581 of the Public Records of Broward County, Florida, as amended by instrument dated September 8, 1964, recorded in Official Records Book 2870, at Pages 582 to 583 of the Public Records of Broward County, Florida; as amended by an instrument entitled Modification of Lease dated December 7, 1971, recorded in Official Records Book 5080, at Pages 845 to 849 of the Public Records of Broward County, Florida; and further amended by that certain Amendment to Lease dated April 22, 1980, recorded in Official Records Book 8958, at Pages 334 to 338 of the Public Records of Broward County, Florida; and as assigned by that certain Assignment of Lease dated August 14, 1980, recorded in Official Records Book 9066, at Page 472 of the Public Records of Broward County, Florida; and further assigned by that certain Assignment of Lease dated May 12, 1982, recorded in Official Records Book 10204, Page 761 to 764 of the Public Records of Broward County, Florida; and further assigned to the current LESSEE

in that certain Consent to Assignment of Leasehold Interest and Assignment and Assumption of Leasehold Interest dated as of June 29, 1994, recorded in Official Records Book 22333, at Pages 886 to 893 of the Public Records of Broward County, Florida; and as amended and restated in that certain Amended and Restated Lease dated January 4, 1995, recorded in Official Records Book 23168, at Pages 347 to 395 of the Public Records of Broward County, Florida, as amended by First Amendment to Amended and Restated Ground Lease recorded in Official Records Book 50912, Page 1085 of the Public Records of Broward County, Florida, as amended and restated by this Lease.

“**Parks**” shall mean the areas shown as park(s) as shown on [Exhibit F as may be modified from time to time pursuant to any modified Site Plan](#).

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

“**Payment In Lieu Of Taxes**” shall have the meaning set forth in [Article 31](#) of this Lease.

“**Percentage Sum**” shall mean the Applicable Percentage of the amount of the Gross Revenue derived from the Premises by LESSEE for each Lease Year less the Base Rent previously paid for each such Lease Year.

“**Periodic Environmental Procedure**” shall have the meaning set forth in [Section 7.9](#) of this Lease.

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

“**Permitted Exceptions**” shall mean (i) all matters of survey or title pertaining to the Premises as of the Commencement Date; (ii) each Sublease; (iii) zoning restrictions and prohibitions imposed by governmental authority; (iv) this Lease; and (v) matters contemplated by this Lease and any schedule thereto.

“**Permitted Times**” shall mean the hours of 6:00 a.m. to 9:00 p.m. each day, except when designated for use for Special Functions, as may be revised from time to time by LESSEE and City Manager.

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

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

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

“**Phased Building(s)**” shall mean, as applicable, the buildings and/or improvements in the area generally shown on the Site Plan to be located within the applicable Phased Parcel, as same shall be amended from time to time as the Site Plan is amended.

“**Phased Lease**” shall mean an agreement substantially in the form of **Exhibit G** attached hereto and made a part hereof to be executed by LESSOR and the applicable Phased Lessee with respect to the City leasing the Phased Parcel to the Phased Lessee and the Phased Lessee’s agreement with respect to such Phase Parcel.

“**Phased Lessee**” shall mean the lessee (as designated in writing by the LESSEE) of the applicable Phased Parcel to whom the City will lease such applicable Phased Parcel pursuant to the applicable Phased Lease.

“**Phased Parcel**” shall mean the (i) Branded Hotel Parcel and (ii) up to four (4) other portions of the Property to be leased by the City to the applicable Phased Lessee which shall be located within four (4) of the parcels generally described on **Exhibits B-1 through B-7** attached hereto and made a part hereof as each such Phased Parcel may be adjusted as contemplated in Sections 1.2 and 1.3 of this Lease.

“**Premises**” shall mean the property with all improvements thereon as set forth on **Exhibit A**, as same may be modified as set forth in this Lease, together with the rights of Grantee an affiliate of LESSEE to utilize the Bridge as provided in the Bridge Agreement.

“**Prohibited Uses**” shall be the uses prohibited pursuant to Sections 21.4, 21.5 or 21.6 of this Lease.

“**Promenade**” shall mean the boardwalk, landscape buffer, and other improvements , if any, in the area shown on **Exhibit H**, as same may be modified by amendments to the Site Plan in accordance with this Lease or with the written approval of the City Manager (to the extent a modification to the Site Plan is not required) or as same may be renovated, repaired, or temporarily closed from time to time.

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

“**Pro Rata Qualifying Rent**” for a Sublease or a Sub-Sublease shall be the amount equal to (i) the Fair Market Value Rent (for all Subleases for portions of the Premises other than the

Marina); and (ii) with respect to the Marina, an amount equal to at least the Applicable Percentage multiplied by the Marina Gross Revenue derived by such Sublessee of the Marina.

“**Property**” shall mean the property described on **Exhibit A**.

“**Proposed Improvements**” shall mean the improvements (renovation or new construction) hereafter made on the Premises from and after the Commencement Date, including the hotel, marina, marina village, office/retail, commercial, and residential buildings, garages, Promenade, and other improvements (including the demolition of any existing Improvements to allow for any other improvements) and appurtenances reasonably related thereto or as contemplated in the Site Plan.

“**Qualifying Sublessee**” shall mean a sublessee or sub-sublessee who has been reasonably approved by LESSOR with respect to the reputation of such Person and such Person (or a manager performing management services for such Person) having reasonable experience to operate such subleased or sub-subleased premises, as applicable.

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

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

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

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

“**Reserve Amount**” shall mean an annual amount equal to three percent (3%) of the annual Gross Revenue of LESSEE for the preceding Lease Year.

“**Reserve Credit(s)**” shall mean the aggregate of Thirty-Eight Million Ninety Thousand Seven Dollars (\$38,090,007) plus any amount expended for Capital Improvements to the Property made after December 31, 2019 less an amount equal to the Reserve Amount per year which has accrued to such time (and not otherwise funded) from and after January 1, 2020 (prorated for a partial year) as provided in **Article 38**.

“**Residential Unit Owner**” shall mean **“Branded Residential Unit Owner”** as defined in any Phased Lease.

“**Retail/Office**” shall mean the commercial, retail, and office space located on the Premises (excluding the Marina but including the third party offices in the marina office building).

“**Retail/Office Gross Revenue**” shall mean the Gross Revenue derived from Retail/Office space.

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

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

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

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

“**Sidewalk**” shall mean the boardwalk portion (as may be relocated, modified, temporarily closed, renovated, etc. from time to time) of the Promenade as shown on the Site Plan.

“**Site Plan**” shall mean the site plan reflected by the referenced plans and exhibits identified in the list attached hereto and made a part hereof as **Exhibit I-1** which has been approved by the City prior to the Commencement Date, as same may be modified from time to time as provided in this Lease. Upon request of the **Tenant LESSEE**, the Parties have agreed to work closely with each other to revise the Site Plan to the site plan as generally shown on **Exhibit I-2**. Such revised Site Plan shall be subject to approval by the City

“**Special Functions**” shall mean (i) special events conducted on or around the Premises (including the Promenade and/or Parks) such as concerts, the Boat Show, weddings, and other special events; and (ii) for reasonable times for renovation, relocation, repair, and maintenance. It is the intent that the Promenade will generally be available for public use as contemplated in Section 38.2 of this Lease, subject to Special Functions (which would result in closure of portions of the Promenade during time periods) such as, but not limited to, concerts, road rally, Boat Show, weddings, conference events, promotional events, civic or charitable events, or similar events which may or may not require a special event permit or other authorization from the City or with the reasonable approval of the City Manager. With respect to the Parks located on the Premises, such Special Functions shall be such events reasonably conducted by LESSEE or its designees in connection with (i) the business conducted by LESSEE in connection with the Hotel operation upon the Premises, including, but not limited to, weddings, parties, conference and other events, luncheon or dinners, etc. (“**Hotel Operations**”); (ii) for any other activities in addition to Hotel Operations for up to six (6) times each month (whereby no approval of LESSOR will be required); and (iii) if there are to be more than six (6) events desired as referred to in (ii), then for such greater number of times in a month, LESSEE shall need to obtain the approval of the City Manager for such additional events, which shall be granted in the City Manager’s discretion, acting reasonably, or if disapproved, by specifying in reasonable detail the basis of such disapproval, which decision will not be unreasonably denied, withheld, or delayed. In addition to the foregoing, portions of the Promenade and/or Parks may be closed for such period of time as reasonably necessary to repair damage to and/or to perform maintenance.

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

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

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

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

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

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

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

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

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

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

“**Substantial Completion**” shall mean substantial completion of the work (as evidenced by certificate of occupancy, certificate of completion or comparable certificate issued by the City as required (if applicable) in its governmental capacity under the Florida Building Code, as amended, evidencing the work for which such certificate or permit (if applicable) has been issued is substantially completed so it may be utilized).

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

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

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

“**Third Party Contractor**” shall have the meaning set forth in Section 11.16.

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

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

“**Unexpended Revenues**” shall have the meaning set forth in Section 37.2 of this Lease.

“**Unit**” shall have the meaning set forth in the Phased Lease.

ARTICLE 4 TERM

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

Section 4.2 Extended Term. Provided no Event of Default exists and LESSEE has applied for the building permit(s) to construct the Promenade and is thereafter proceeding diligently to obtain such building permit(s) and construct the Promenade, then after the Promenade’s Completion has occurred within the Initial Term, LESSEE shall have the right to extend the Term of this Lease for an additional period of fifty (50) years, so that the Term of this Lease (as so extended) shall expire one hundred (100) years after the Commencement Date (“**Extended Term**”).

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

Section 4.4 Original Lease. Upon the Commencement Date, the Original Lese shall terminate and be replaced in its entirety (subject to the provisions of Section 32.1 of this Lease) by this Lease.

ARTICLE 5

POSSESSION AND LETTING

Section 5.1 Possession. Possession of the Premises by LESSEE shall continue from and after the Commencement Date. LESSEE may (i) make improvements and rehabilitate the Premises; (ii) carry on and conduct its business and operate the Premises; (iii) develop and redevelop the Premises in accordance with the terms of this Lease; and (iv) use the Premises as provided in this Lease. LESSOR and LESSEE acknowledge and agree to the following (i) all subleases with respect to the Premises previously executed by LESSEE that were in effect immediately prior to the Commencement Date of this Lease shall, at LESSEE’S option, remain in full force and effect; (ii) all operating agreements entered into by LESSEE that were in effect immediately prior to the Commencement Date of this Lease with respect to the Premises shall remain in full force and effect in accordance with their terms; (iii) all non-disturbance agreements with respect to this Lease, subleases, Leasehold Mortgages, Subleasehold Mortgagees and/or Sub-Subleasehold Mortgagees shall remain in full force and effect; and (iv) LESSEE shall continue to

own the Improvements and other personal property located upon the Premises, subject to the terms of this Lease.

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

ARTICLE 6

COMPLIANCE WITH REGULATIONS OF PUBLIC BODIES/RESPONSIBILITY FOR IMPROVEMENTS

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

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

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

ARTICLE 7

HAZARDOUS SUBSTANCES

Section 7.1 LESSOR'S Consent Required. During the Term, LESSEE covenants and agrees that in the use of the Premises, no Hazardous Substances in excess of limits permissible by or in violation of applicable Hazardous Substances Laws shall be brought upon, kept or used in or about the Premises by any Person whomsoever, unless LESSEE first obtains the written consent

of LESSOR. LESSOR does hereby consent to the use of those Hazardous Substances reasonably and normally used for the purposes of the operation of the Permitted Use, including, but not limited to, hotel, retail, office, residential and marina uses (including fueling activity). LESSOR also waives the requirement for its consent as to Sublessees under the Original Lease which LESSEE determines to continue under this Lease.

Section 7.2 Notices. Other than as has been previously disclosed in writing to LESSOR as shown on Exhibit M, if at any time LESSEE shall become aware, or have reasonable cause to believe, that any Hazardous Substance in violation of any applicable Hazardous Substances Laws has come to be located on or beneath the Premises or within the Marina after the Commencement Date, LESSEE shall immediately, upon discovering such presence or suspected presence of the Hazardous Substance, give written notice of that condition to LESSOR. In addition, LESSEE shall promptly notify LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substances Laws; (ii) any written claim made or threatened by any Person against LESSEE, the Premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances; and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith. LESSEE shall also supply to LESSOR as promptly as possible, and in any event, within five (5) business days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations of any applicable Hazardous Substances Laws relating in any way to the Premises or improvements located thereon or LESSEE'S use thereof.

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

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

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

Section 7.5 Hazardous Substances Indemnification of LESSOR.

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

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

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

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

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

(v) the disposal of Hazardous Substances, or

(vi) some or all of the foregoing.

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

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

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

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

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

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

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

(d) The indemnification provided in this Section 7.5 and all indemnity obligations of LESSEE in the Original Lease in connection with Hazardous Substances shall survive the termination or expiration of this Lease, but shall end, with respect to any claim or cause

of action, with the expiration of any applicable statute of limitations for such claim or cause of action;

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

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

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

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

LESSOR’S Tests shall be at the sole cost of LESSOR. The cost and expenses relating to LESSOR’S Tests shall not be included in remediation provisions of Section 7.4 or in the scope of any indemnification provided in favor of LESSOR in this Lease. No LESSOR Tests shall be conducted until LESSOR has provided to LESSEE the name of the testing contractor (which shall be fully licensed to conduct LESSOR Tests) and a certificate of insurance with limits reasonably acceptable to LESSEE confirming that LESSEE is an additional insured

and that coverage exists for property damage, personal injury and business interruption which may result from LESSOR'S Tests. LESSOR agrees to indemnify and hold LESSEE harmless (subject to its limitation of sovereign immunity liability) with respect to any loss, claim or damage (including attorney's fees and expenses) which LESSEE shall suffer as the result of the conduct of LESSOR'S Tests.

Section 7.7 Petroleum Liability and Restoration Insurance Program. During the term of this Lease, LESSEE shall, so long as coverage is commercially available and the State of Florida maintains the Petroleum Liability and Restoration Insurance Program and the Inland Protection Trust Fund (or replacement programs), maintain in effect the Petroleum Liability and Restoration Insurance Program Coverage for Third Party Liability for Contamination in the amount of Ten Million Dollars (\$10,000,000) which \$10,000,000 shall remain until June 27, 2021 as described on **Exhibit K** attached hereto, and to the extent that same is available on a commercially reasonable basis, the amount of such coverage shall be increased every five (5) years thereafter as provided in Section 20.2 of this Lease.

Section 7.8 Environmental Assessments; Consent to Assignment. Any provision herein to the contrary notwithstanding, LESSEE, LESSEE'S proposed assignee, whichever the case may be, shall, at its own cost and expense, furnish to LESSOR a complete Phase I environmental assessment and Phase II environmental assessment (if required by the Phase I Environmental Site Assessment of the Premises), performed by environmental experts reasonably found qualified by LESSOR ("**Environmental Assessment**") as a condition precedent to LESSOR'S consent to an assignment of the leasehold interest if such consent is required. The Environmental Assessment shall include a qualitative and quantitative analysis of the presence of Hazardous Substances on, within or below the Premises in violation of Hazardous Substances Laws. LESSOR may withhold any required consent to the assignment of the leasehold interest, if such Environmental Assessment indicates that there are Hazardous Substances located on the Premises occurring after the Commencement Date in violation of Hazardous Substances Laws, until such Hazardous Substances in violation of applicable law have been remediated or security is posted (unless LESSEE has applicable insurance coverage in a sufficient amount in which event no additional security will be required) with LESSOR which is based upon an estimate of cost from an environmental engineer or other recognized environmental consultant competent to provide such estimate to be provided by LESSEE to LESSOR (at no cost to LESSOR) and which estimate is reasonably deemed by LESSOR to be adequate to cover the costs of any required clean-up, detoxification or remediation of the Premises from the presence of Hazardous Substances in violation of Hazardous Substances Laws upon, within or below the Premises and any and all fines or penalties associated therewith. The foregoing is collectively referred to as the "**Environmental Procedure**".

Section 7.9 Periodic Environmental Procedure. In addition to the requirement in Section 7.8 of this Article, for the Environmental Procedure to be performed as a condition precedent to LESSOR'S consent, if required, to any assignment of this Lease, LESSEE shall perform the Environmental Procedure for the benefit of LESSOR prior to the expiration of the tenth (10th) Lease Year and every tenth (10th) Lease Year thereafter unless a prior Environmental Procedure was completed within the two (2) years prior to such date. The foregoing is referred to as the "**Periodic Environmental Procedure**". In each case, the Periodic Environmental

Procedure shall be completed, such that the Phase I and Phase II (if required) environmental assessments reports are delivered to LESSOR not later than forty-five (45) days subsequent to the due date for each Periodic Environmental Procedure. At the time of each Periodic Environmental Procedure, LESSEE shall bring the property into compliance if any violations of Hazardous Waste Laws are noted in such reports.

ARTICLE 8
INDEMNITY AGAINST COSTS AND CHARGES

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

ARTICLE 9
INDEMNIFICATION AGAINST CLAIMS

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

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

(ii) any Regime development on the Premises, to the extent a Regime is created by LESSEE upon any portion of the Premises, that such Regime does not comply with the Act, or that this Lease does not comply with §718.122, §718.401 or §718.404 of the Act, or that any documents used by LESSEE in the sale or marketing or description of the Regime were inaccurate, misleading, incomplete, or failed to satisfy all legal requirements, or that involve owners or occupants of Units, or that the Regime is not a leasehold Regime;

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

(iv) construction liens; other liens, levy or execution by judgment creditors; liens and assessments imposed by governmental authorities (excluding LESSOR); prescriptive rights and adverse possession, or other loss of title to or encumbrance of LESSOR's interest in the Premises arising due to LESSEE's acts or failure to act after the Commencement Date (other than when caused by the acts of or with the consent of LESSOR or through condemnation); and claims arising as a result of Section 5.1 of this Lease. LESSEE acknowledges and agrees that LESSOR shall not be deemed to have waived any of its rights not to be subject to adverse possession, prescriptive rights or other loss of title as may be afforded LESSOR pursuant to applicable law, whereby LESSOR's real estate interests pass to third parties (if any);

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

(vi) negligent, reckless, or willful or intentional acts or omissions of LESSEE, its Sublessees, and Sub-Sublessees, or of any other Person enjoying a right of possession or use of any portion of the Premises by through or under any of them (except when such Person enjoying such derivative right of possession or use is LESSOR or its agent, through use of the Premises available to the public, such as the use of the Promenade ("**Public Use**")); or

(vii) some or all of the foregoing.

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

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

(c) The indemnification provided in this Article 9 and all indemnity obligations of LESSEE in the Original Lease in connection with any of the matters described in subsections (a)(i) through (a)(vii) in this Article 9 shall survive for the statute of limitations, the termination or expiration of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action.

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

of third parties pursuant to the Indemnity provided in this Article 9, LESSEE may assert LESSOR's sovereign immunity to the greatest extent as may be provided by law.

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

ARTICLE 10 **INSPECTION**

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

ARTICLE 11 **CONSTRUCTION BY LESSEE**

Section 11.1 Phased Construction. It is intended that the Premises will be developed in one (1) or more phases and that in connection therewith LESSEE may require Phased Leases be entered into as to such phases as contemplated by this Lease and/or to sublease portion(s) of the Premises, which leasehold and/or subleasehold interest may be encumbered by Leasehold Mortgage(s) and/or Subleasehold Mortgage(s) held by different lenders all as provided in this Lease. In connection with said contemplated development, the parties agree that:

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

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

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

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

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

11.1.6 There is no requirement pursuant to this Lease as to timing or phasing of improvements which may be made to the Premises.

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

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

Section 11.3 Deemed Approval. In the event that with respect to approvals to be given by the City Manager on behalf of LESSOR with respect to approval of the Permitted Changes or construction plans and specifications, the City Manager shall fail to approve or disapprove (and specify the basis for such disapproval) any Permitted Changes or plans or specifications submitted to LESSOR which require its approval within thirty (30) days of being submitted to LESSOR, LESSEE shall deliver written notice to LESSOR advising LESSOR that LESSOR has not responded to LESSEE within the required 30-day period and LESSOR shall have an additional ten (10) days thereafter to respond to LESSEE with such approval or disapproval. In the event that LESSOR fails to respond after the expiration of the additional 10-day period, then LESSOR shall be deemed to have approved such documents, provided the correspondence of such submittal to the City Manager advises the City Manager that a failure to respond within such thirty (30) period shall be a deemed approval thereof under this Lease.

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

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

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

Section 11.6 Evidence of Funding. Prior to commencing construction of any of the Improvements shown on the Site Plan having a cost in excess of Ten Million Dollars (\$10,000,000), LESSEE shall provide LESSOR with reasonable evidence of the ability to construct and pay for such improvements then being constructed which shall be subject to the City Manager's reasonable review and approval and which shall include providing a copy of any financing commitment and a certification that the balance will be funded from equity (and when this occurs, a copy of the most recent audited financial statements of LESSEE, together with a statement from an officer of LESSEE that as of the submission date, there has been no material adverse change in the financial condition of LESSEE as reflected in such financial statements or if there are, identifying same), deposits provided by third parties or other sources of funding such improvements, a copy of the proposed construction contract with the scope of work, and payment and performance bonds (if applicable) to assure the performance of any construction contract which meets the requirements of Article 29.

Section 11.7 LESSEE Premises. Unless otherwise set forth herein (including as set forth in Section 4.3), all Improvements and all fixtures, structures, facilities, pavements and other leasehold improvements and any additions and alterations made to the Premises (including those that are nailed, bolted, stapled, or otherwise affixed to the Premises) by LESSEE, or at LESSEE's direction, shall be and remain LESSEE's property until the expiration or termination of this Lease, at which time, all such affixed leasehold improvements (other than trade fixtures and personal property) shall become LESSOR's property and shall be surrendered with and remain on the Premises.

Section 11.8 Encumbrances. LESSEE hereby represents, warrants and covenants to LESSOR that the fee simple title to the Premises shall be at all times free and clear of all liens,

claims and encumbrances created by or through LESSEE (other than those created or consented to by LESSOR); provided, however, that LESSEE shall be entitled to encumber the leasehold estate, subleasehold estates, sub-subleasehold estates and/or LESSEE's interest in the Improvements subject to the provisions of this Lease.

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

Section 11.9 As Builts. Within one hundred twenty (120) days after the date a Certificate of Occupancy is issued for any Proposed Improvements requiring such document, LESSEE shall at its expense, provide LESSOR with a complete set of "as built" plans and specifications, including mylar reproducible "record" drawings, and, if available, one set of machine readable disks containing electronic data in an AUTOCAD format that meets LESSOR's graphic standards of the "as-constructed" or "record" plans for such Improvements.

Section 11.10 Required Governmental Approval. LESSEE shall obtain all required Governmental Approvals having jurisdiction over any Proposed Improvements.

Section 11.11 Redevelopment. LESSEE (or its designees) may, at no expense to LESSOR, and at any time, construct, demolish and/or reconstruct additional buildings or structures on any portion of the Premises and make such alterations, additions or changes, structural or otherwise, in and to the Improvements as LESSEE may deem necessary or suitable provided that such Improvements are consistent with the Site Plan and the Approved Plans for such component of the work or as approved by the City Manager.

Section 11.12 Governmental Approvals Joinder. LESSOR acknowledges that LESSEE intends to develop the Premises or have the Premises developed and that in connection therewith, it will be necessary for LESSEE to apply to the City of Fort Lauderdale (in its governmental capacity) and other governmental and quasi-governmental authorities in an effort to obtain all final Governmental Approvals in connection with the development of such Improvements. LESSOR agrees to reasonably cooperate with LESSEE in seeking the Governmental Approvals from other governmental and quasi-governmental authorities for the Improvements. LESSOR shall reasonably cooperate in the execution of applications (to the extent required by any governmental or quasi-governmental authorities) and other documentation in connection with such Governmental Approvals; provided, LESSOR shall not be required thereto to expend any sums in connection with such assistance (other than its review costs) and provided such applications are substantially consistent with the Approved Plans and the Site Plan or as approved by the City Manager.

Section 11.13 Comprehensive General Liability Insurance. The general contractor performing construction of any Improvements or upon any Improvement located on the Premises shall provide, pay for and maintain in force, during the time such work is being performed, comprehensive general liability insurance with limits of at least (i) \$1,000,000 (with respect to work costing up to \$2,000,000); (ii) \$1,000,000 with a \$2,000,000 umbrella with respect to work between \$2,000,000 and \$5,000,000; and (iii) \$1,000,000 with a \$5,000,000 umbrella with respect to work in excess of \$5,000,000; all on a per occurrence combined single limit for bodily injury liability and property damage liability.

Section 11.14 Insurance Requirements for Construction Contracts.

(a) LESSEE agrees to include the following insurance requirements in any agreement it enters into with any contractor(s) performing construction work on the Premises and to require in its Subleases entered into after the date hereof (excluding boat leases at the Marina), the following insurance in 11.14(b) and LESSEE further agrees to provide to LESSOR, prior to commencement of the improvements with respect to such contract, certificates of insurance evidencing the contractor's compliance with the requirements of this Section 11.14:

(b) Without limiting any of the other obligations or liabilities of any contractor performing work valued in excess of \$500,000 which requires a building permit, such contractor shall provide, pay for, and maintain in force until all of its work to be performed has been completed, the insurance coverages set forth herein.

(A) Workers' Compensation insurance for all employees working on the Premises in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.

(B) Comprehensive General Liability as provided in Section 11.13 above.

(C) Business Automobile Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(D) LESSOR is to be expressly included as an "Additional Insureds" as their interest may appear.

(E) LESSEE shall not allow the use of the Premises or the Improvements thereof to be performed in a manner which would invalidate or cancel any insurance policy or coverage to be maintained by LESSEE pursuant to this Lease.

(F) Builder's Risk in an amount which is commercially reasonable.

Section 11.15 Certificates. With respect to the insurance to be obtained, LESSEE shall provide to LESSOR prior to commencement of the Proposed Improvements on the Premises, certificates of such applicable insurance evidencing the insurance coverage as specified above.

LESSOR may require that the delivery of copies of policies and declaration pages which shall, to the extent commercially obtainable, provide that they should not be cancelled without thirty (30) days advanced written notice to LESSOR.

Section 11.16 Contractor Indemnity. LESSEE shall use commercially reasonable efforts (without being required to incur any significant increase in cost) to obtain in any contract for labor, services or materials to be provided in connection with the construction of Improvements in excess of \$10,000,000 between LESSEE or its Affiliate and a general contractor constructing such Improvements (each a "**Third Party Contractor**") a provision for an indemnification clause whereby the Third Party Contractor shall indemnify, defend, and hold harmless LESSEE and LESSOR for any and all claims, suits, causes of action, and proceedings, for all loss, costs, damages, or expenses, including, but not limited to, attorneys' fees and court costs through all trial and appellate levels and post judgment proceedings, with respect to claims for personal injury and/or property damage asserted against LESSOR, LESSEE, or both LESSOR and LESSEE, which are alleged to have been caused by the Third Party Contractor, its subcontractors, subconsultants, agents and employees in connection with performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract and arising out of such Third Party Contractor's negligence and/or wrongful acts and omissions. Subject to the provisions of Section 9(e), the Third Party Contractor shall retain legal counsel to defend LESSOR with competent legal counsel reasonably acceptable to LESSOR.

ARTICLE 12

NO LIENS CREATED BY LESSEE

LESSEE covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of LESSOR in and to the Premises covered by this Lease, and that no Person shall ever be entitled to any lien, directly or indirectly derived through or under LESSEE, or his agents or servants, or on account of any act or omission of said LESSEE, which lien shall be superior to the lien of this Lease reserved to LESSOR upon the Premises. All Persons contracting with LESSEE, or furnishing materials or labor to said LESSEE, or to his agents or servants, as well as all Persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LESSEE shall not be deemed to be the agent of LESSOR, so as to confer upon a laborer bestowing labor upon the Premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Premises, a mechanic's lien pursuant to Chapters 713 or 255, Florida Statutes, or an equitable lien upon LESSOR'S estate. This provision shall be deemed a notice under Section 713.10(1), Florida Statutes, as amended, of the "non-liability" of LESSOR, and shall be included in a Memorandum filed in the real property records in Broward County, Florida.

ARTICLE 13

OPERATING COSTS

Section 13.1 LESSEE agrees to promptly pay when due all operating, maintenance and servicing charges and costs, including telephone, gas, electricity, water, stormwater, sewer, sewer connections, and all other expenses incurred in the use and operation of the Premises by LESSEE,

other than expenses of Non-Affiliated Persons, LESSOR in connection with Section 32.2, and LESSOR's obligation to pay for power or fuel to the extent utilized by LESSOR for LESSOR's boats who utilize the boat slips permitted in Section 33 of this Lease.

Section 13.2 LESSEE agrees to obtain at its expense all permits and licenses which may be required by any governmental authority for LESSEE to maintain and operate the Premises but not for portions of the Premises subleased to Non-Affiliated Persons.

Section 13.3 Upon LESSOR'S request, LESSEE shall promptly furnish to LESSOR evidence, reasonably satisfactory to LESSOR, showing LESSEE'S compliance with its obligations under this Article.

ARTICLE 14 **NONWAIVER**

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

ARTICLE 15 **BANKRUPTCY OF LESSEE**

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

ARTICLE 16 **LEASEHOLD MORTGAGEE**

Section 16.1 Leasehold Mortgage. LESSEE shall have the right to mortgage, assign, pledge or hypothecate its interest in this Lease to a Leasehold Mortgagee as security for an obligation ("**Leasehold Mortgage**"), provided in connection with obtaining such Leasehold Mortgage (i) LESSEE shall forward to LESSOR a copy of such Leasehold Mortgage, together with a written notice setting forth the name and address of the holder of such Leasehold Mortgage ("**Leasehold Mortgagee**"); and, (ii) in connection therewith, LESSOR agrees that it will, within thirty (30) days of request by LESSEE to LESSOR, enter into a Non-Disturbance Agreement

substantially in the form attached to this Lease and if not in such form, then in a form reasonably acceptable to City Manager and such Leasehold Mortgagee provided LESSEE is not in default under this Lease as determined by LESSOR in its commercially reasonable discretion at the time of LESSEE's request to enter into such Non-Disturbance Agreement and if not in the form of **Exhibit E-1**, then in a form reasonably acceptable to LESSOR and such Leasehold Mortgagee. Attached as **Exhibit E-1** is a form of Non-Disturbance Agreement which LESSOR has reasonably approved for Leasehold Mortgagees. A Leasehold Mortgage can only exist between LESSEE and a Leasehold Mortgagee, and such term as used in this Lease shall exclude leasehold mortgages executed by Sublessees or Sub-Sublessees. With respect to Leasehold Mortgages, LESSEE agrees that LESSEE shall not cross-collateralize the Premises with other property not related to: this Lease, LESSEE's leasehold or subleasehold interests in the Premises, LESSEE's interest in the Premises, or LESSEE's tangible and/or intangible property relating to the Premises.

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

Section 16.3 **Sub-Subleasehold Mortgage**. Any Sub-Sublessee shall have the right to mortgage, assign, pledge or hypothecate its interest in any Sub-Sublease as security for an obligation ("**Sub-Subleasehold Mortgage**"); provided however, only for Sub-Sublessees with whom LESSOR has executed or is executing a Non-Disturbance Agreement with respect to the Sub-Sublease as contemplated in Section 22.4 of this Lease: (i) LESSEE shall forward to LESSOR a copy of such Sub-Subleasehold Mortgage, together with a written notice setting forth the name and address of the holder of such Sub-Subleasehold Mortgage ("**Sub-Subleasehold Mortgage**") and, in connection therewith; and (ii) in connection therewith, LESSOR agrees that it will, within thirty (30) days of request by LESSEE to LESSOR, and upon LESSOR's reasonable approval of the form of Non-Disturbance Agreement, enter into a Non-Disturbance Agreement with such Sub-Subleasehold Mortgagee. Attached as **Exhibit E-3** is a form of Non-Disturbance Agreement for Sub-Subleasehold Mortgagees which LESSOR has approved for Sub-Subleasehold Mortgagees and if not in such form, then in a form reasonably acceptable to LESSOR and such Sub-Subleasehold Mortgagee. With respect to Sub-Subleasehold Mortgages for which Non-

Disturbance Agreements are being given, the Sub-Sublease and Non-Disturbance Agreement for such Sub-Subleasehold Mortgage shall require that the Sub-Sublessee not cross-collateralize the Sub-Subleased Premises with other property not related to the Sub-Sublease, Sub-Sublessee's interest in the Sub-Subleased Premises, or Sub-Sublessee's tangible and/or intangible property relating to the Sub-Subleased Premises.

Section 16.4 Confirmation. Any mortgage on any leasehold, subleasehold or more remote interest shall be subject to the foregoing provisions and shall not encumber the fee simple title of LESSOR. LESSOR shall, no more than two (2) times a year (as to each Leasehold Mortgage, and as to each Subleasehold Mortgage or each Sub-Subleasehold Mortgage for which LESSOR has signed a Non-Disturbance Agreement), upon reasonable written request, provide such Leasehold Mortgagee, Subleasehold Mortgagee or Sub-Subleasehold Mortgagee with estoppel information as to the status of this Lease in form and substance that is reasonably acceptable to LESSOR. LESSEE and all outstanding Leasehold Mortgages, Subleasehold Mortgagees and Sub-Subleasehold Mortgagees acknowledge and agree that any assignment of an assignor's interest as LESSEE, Sublessee or Sub-Sublessee or to any Leasehold, Subleasehold or Sub-Subleasehold Mortgagee does not give LESSEE or its assignee, Sublessee or Sub-Sublessee any lien or encumbrance upon the fee simple ownership and interest in the Premises which is vested in LESSOR.

Section 16.5 Extension by Mortgagee. In the event that LESSEE, Sublessee, a Sub-Sublessee or a more remote interest shall fail to timely exercise its option to extend the term of this Lease, any applicable Sublease, Sub-Sublease or more remote interest (to the extent applicable, at the time required to request such extension and subject to the right of such party's mortgagee to cure any breach as provided in the Non-Disturbance Agreement), the Leasehold Mortgagee, and the holder of any applicable Subleasehold, Sub-Subleasehold or more remote Mortgage, whose name and address are on file with LESSOR pursuant to the provisions of this Lease (and provided LESSOR has signed a Non-Disturbance Agreement with such Leasehold Mortgagee, applicable Subleasehold Mortgagee, or Sub-Subleasehold Mortgagee) shall have the right, for a period of sixty (60) days following the last day on which LESSEE, applicable Sublessee, Sub-Sublessee or more remote interest could have exercised such option and for such period only, to exercise in the name of LESSEE, applicable Sublessee, Sub-Sublessee or more remote interest such option to extend the term of this Lease, the applicable Sublease, Sub-Sublease or more remote interest (as applicable).

Section 16.6 Cooperation. LESSOR shall reasonably cooperate in executing and delivering any required additional or collateral documentation necessary to effectuate the approvals of LESSOR, including, but not limited to, estoppel letters, provided same are in form and substance satisfactory to LESSOR in its reasonable discretion.

ARTICLE 17 **DEFAULT**

Section 17.1 Default. If LESSEE shall fail to keep and perform any of the covenants, conditions and agreements herein provided to be performed by said LESSEE, and as to monetary defaults such default shall continue for thirty (30) days from the date of LESSOR's notice to LESSEE of the existence of such default and as to nonmonetary defaults such default shall

continue for a period of sixty (60) days from the date of LESSOR's notice to LESSEE of the existence of such default, subject to the other terms of this Lease extending such cure period (LESSEE's cure period), under either circumstances said notice to be provided pursuant to the Article hereof entitled "*Notices*" to LESSEE and to Leasehold Mortgagees and mortgagees with whom LESSOR has executed a Non-Disturbance Agreement directing that the said default be corrected within an additional thirty (30) days after the expiration of the applicable LESSEE's cure period, LESSOR shall have the right, subject to the terms of any Non-Disturbance Agreement(s) previously executed by LESSOR, to treat same as a default hereunder.

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

Section 17.3 Payment of Base Rent and Tax and Insurance. LESSOR hereby agrees that, notwithstanding any other provision of this Lease, (a) there will be no cancellation or termination of this Lease so long as Base Rent, Percentage Sum, taxes and insurance are paid when due or cured within the applicable cure period set forth in Section 17.1, and (b) LESSOR will not, by reason of the nonpayment of Base Rent, Percentage Sum, taxes or insurance payments, exercise its right to cancel or terminate this Lease prior to the expiration of the applicable cure period set forth in Section 17.1 for any of such defaults.

Section 17.4 Additional Remedies.

17.4.1 In addition to the remedies set forth above, if an Event of Default exists, then LESSOR shall be entitled to all other remedies available at law or at equity which are available to LESSOR in enforcing leases, as such remedies may exist from time to time, but LESSOR shall not have the right to terminate this Lease, other than pursuant to Section 17.3 and may not accelerate the payment of Rent. Notwithstanding the foregoing, to the extent LESSOR seeks damages, LESSOR shall only be able to seek from LESSEE compensatory damages, and LESSOR shall not be entitled to punitive or consequential damages.

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

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

costs incurred by LESSOR in connection with such acts to cure within thirty (30) days of written demand, together with reasonable supporting documentation of such expenses.

Section 17.5 Right to Cure. In the event the Premises and Improvements are not maintained in accordance with the standards set forth in this Lease, LESSOR shall notify LESSEE and give LESSEE a reasonable opportunity to maintain such elements as are required herein. If LESSEE shall refuse or fail to maintain same after written notice and a reasonable opportunity to cure of at least the applicable cure period set forth in this Article 17, then LESSOR shall have the right, but not the obligation, to repair or maintain same to the standard required by this Lease and the reasonable costs of such maintenance shall be payable as Additional Rent within thirty (30) days of written notice from LESSOR to LESSEE of the costs incurred by LESSOR (together with reasonable supporting documentation of such expenses). The fact that LESSOR undertakes any repair or maintenance of the Improvements shall impose no continuing duty on the part of LESSOR to continue such repair or maintenance. This remedy shall be supplemental and cumulative to all other remedies of LESSOR as provided in this Section 17.

ARTICLE 18 **REPAIRS AND MAINTENANCE**

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

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

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

18.1.3 All parking facilities, access drives and loading areas on the Premises shall be paved and properly graded to assure proper drainage in accordance with the permits for such areas. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard surfaced areas located on the Premises and intended for use by vehicular or pedestrian traffic shall be maintained. Materially uneven settlement at expansion or control joints, potholes, and damaged or eroding areas shall be repaired, and such areas shall be replaced or resurfaced as reasonably necessary or as reasonably requested by the City Manager to comply with applicable law. Lighting shall be

maintained such that light fixtures will not be broken, hanging, or loose, and pole supports, if any, remain suitably anchored and maintained consistent with their original designated purpose. All curbing and bumper stops shall be replaced if damaged in any material respect. All striping, including but not limited to parking space, traffic lane and directional markings, within any road, street, or parking area located within the Premises shall be repainted as reasonably necessary, so that same will be clearly visible.

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

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

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

18.1.7 Marina Standards. All docks, piers, seawalls, and ramps shall be maintained, repaired, and replaced as necessary so that such improvements shall remain in a good and clean condition consistent with other marinas located within high end residential and/or high end commercial complexes located in the South Florida marketplace ("Marina Standards").

18.1.8 Hotel Standards. The Hotel, when operated, shall be maintained and operated so that it achieves and maintains a [3 Star Rating \(however, upon redevelopment of the Hotel pursuant to the Site Plan, a 4 Star Rating\)](#) from a nationally recognized hotel rating system/guide ("Hotel Standards"). In the event that these rating standards are discontinued, the parties shall reasonably agree on a successor standard that is as equivalent as possible to the foregoing ratings.

Section 18.2 Repairs. LESSEE agrees at its expense to make all repairs to the Premises including but not limited to, buildings, improvements, including electrical, plumbing, sewer, sewer connections, structural and all other repairs that may be required to be made to such improvements on the Premises, and may change or re-locate any roads thereon, provided reasonable access is maintained for sub-lessees, tenants, or boatmen, and the public (to the extent open to the public).

Section 18.3 Delivery on Termination. LESSEE at its expense agrees to deliver to LESSOR upon the termination of this Lease the Premises including buildings, improvements (excluding trade fixtures), in good state of repair and in good usable condition, ordinary wear, tear

and casualty excepted and if there is a casualty, subject to the obligations with respect to the casualty provisions of this Lease.

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

ARTICLE 19 **PERSONAL PROPERTY**

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

ARTICLE 20 **INSURANCE**

Section 20.1 Fire and Extended Coverage. LESSEE at its expense shall provide fire and extended coverage insurance or all-risk coverage on the real property herein described and all Improvements situated thereon and contents (but not including contents not owned by LESSEE) contained therein or thereupon whether constructed by LESSEE or a Sublessee or Sub-Sublessee for the benefit of LESSOR and LESSEE, Sublessee or Sub-Sublessee (as applicable) as their interest appears. Insurance coverage shall be at least ninety-five percent (95%) of the replacement value of said real property and improvements (including buildings and contents) adjusted every five (5) years on the anniversary date of this Lease in accordance with the increase of reconstruction costs for properties located in South Florida. Certificates of Insurance evidencing said coverage shall be provided to LESSOR.

Section 20.2 Liability. LESSEE at its expense shall provide commercial general liability insurance for the benefit of LESSOR and LESSEE with minimum limits of coverage of not less than Five Million Dollars (\$5,000,000.00) covering bodily injury and property damage. The minimum limits of coverage herein and as required in Section 7.9 (subject to the provisions of Section 7.9) and 11.13 and 11.14 shall be adjusted every five (5) years, on the anniversary date of the Lease Year, in accordance with the increase in the Consumer Price Index for “All Urban Consumers, U.S. City Average (1982 – 1984 = 100)” (hereinafter, CPI) published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by LESSOR during such period (except as to Section 7.7, the amount shall remain \$10,000,000 and shall be adjusted every five (5) years after June 27, 2021, rather than such increase being adjusted per this Section 20.2, such adjustment would be prior to the expiration

of the coverage then in effect and remain the same for the period of the new coverage). On the date(s) of adjustment, the minimum adjusting figures shall be the most recently published figures in effect on the subject adjustment date(s). Certificates of Insurance evidencing said coverage and naming LESSOR as additional insured shall be provided to LESSOR.

Section 20.3 Restoration. In the event of destruction or damage of any of the Premises covered by insurance, the funds payable in pursuance of said insurance policies shall be deposited in any financial institution which serves as the depository for the City of Fort Lauderdale, as an interest bearing trust fund for the benefit of LESSOR and LESSEE or, to the extent required by the Leasehold Mortgagee, the insurance proceeds shall be payable to, held by, and disbursed by such Leasehold Mortgagee in a financial institution in Broward County, Florida and to the extent of LESSEE's interest in this Lease, the Leasehold Mortgagee shall be entitled to participate in any settlement regarding insurance proceeds. The insurance proceeds shall be used for reconstruction or repair as provided in this Section 20.3 of this Lease, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, improvements or personal property so damaged or destroyed. Such reconstruction and repair work shall be done in conformity with all applicable building and zoning codes and in accordance with the terms of this Lease. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then and in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair, and any difference shall be made up by LESSEE. Notwithstanding anything in this Lease to the contrary, LESSOR hereby covenants that the Leasehold Mortgagee shall be permitted to hold insurance proceeds which shall be administered and disbursed by such Leasehold Mortgagee in the same manner as construction funds are customarily disbursed by a commercial construction lender. With respect to LESSEE's interest in this Lease, the Leasehold Mortgagee shall be entitled to participate in any settlement regarding insurance proceeds, but shall not be permitted to use any portion of the insurance proceeds to reduce or pay the debt secured by the Leasehold Mortgage, unless such restoration is first fully performed and completed prior to payment toward such debt. The parties agree that such insurance proceeds held by Leasehold Mortgagee shall be used for reconstruction or repair (as the case may be) as provided in Section 20.3 of this Lease. Once all repairs have been completed, any remaining insurance proceeds will be released to LESSEE unless LESSEE has agreed to otherwise with the Leasehold Mortgagee

ARTICLE 21 **USE OF PROPERTY**

Section 21.1 Permitted Use. Except as stated below, LESSEE agrees, and LESSOR consents, that the Premises shall be used as part of a mixed use resort, consistent with zoning applicable to the Premises, from time to time, including hotels, (including but not limited to Branded Hotel Units) and ancillary uses in connection with hotels, a marina and resort complex, retail, office, multi-family residential dwelling units and/or hotel rooms/units (whether or not submitted to condominium form of ownership), and other uses defined as permitted uses under applicable zoning and which are not either a prohibited use under such zoning or a Prohibited Use under this Lease (collectively "**Permitted Use**") provided however the LESSEE agrees that, without the consent of the City Manager: (i) each Branded Apartment Unit hereinafter developed on the Premises will be Branded and each Branded Hotel Unit shall be Branded and (ii) LESSEE

will not modify the uses of the Premises in a manner which would result in there being: (a) Branded Apartment Units in excess of 350 Branded Apartment Units; (b) Branded Hotel Units in excess of sixty (60) Branded Hotel Units; (c) hotel rooms, upon the redevelopment of the hotel, of not more than 256 hotel rooms plus not more than sixty (60) Branded Hotel Units and related amenities; (d) more than 88,000 square feet of Retail/Office space; or (e) less than 6.3 acres of open space available for use for the Boat Show during the dates the Boat Show is permitted to operate under the Boat Show Lease. Each Phased Lease shall identify in such Phased Lease the maximum number of Branded Apartment Units and/or Branded Hotel Units that will be permitted within such Phase Parcel of such Phased Lease. The Permitted Uses also includes uses such as restaurant(s), cocktail lounge(s), liquor package store, food stores, yacht brokerage offices, convention hall, retail stores, marine stores, marine service station, charter boat and sightseeing boat facility, offices, temporary Special Functions, the Boat Show, other kindred and similar businesses, and also includes all uses for the operation of the Boat Show. Except for the Prohibited Uses as set forth in this Section 21 (unless LESSOR consents to LESSEE conducting the Prohibited Uses on the Premises, such consent being subject to LESSOR'S exclusive and sole discretion, and upon such approval, such uses shall be deemed Permitted Uses), and uses which are prohibited under applicable zoning, it is not the intention of the parties that LESSEE shall be unduly restricted in the use of the Premises other than LESSEE is required to conduct legal business or businesses on the Premises in conformance with the terms of this Lease (excluding the Prohibited Uses without the consent of LESSOR as aforesaid) in keeping with the purpose for which the improvements thereon were constructed. LESSOR agrees that the hotel complexes within the Premises may be maintained and operated in accordance with the standards of a chain-affiliated, full-service, mid-market hotel or better, so as to comply with the requirements of Section 18.1.8 of this Lease. Such standards are intended to provide quality accommodations and service to guests and visitors, but may be lower than those found in the luxury hotel market.

It is the desire of the parties that LESSEE be able to conduct its business in and upon the Premises so as to provide for improved business for LESSEE.

Section 21.2 Character. LESSEE shall maintain the character of the Premises as a marina, hotel, retail, commercial, and mixed-use resort development, including multi-family residential dwelling uses, and all of the other uses contemplated in Section 21.1 above.

Section 21.3 Conduct Business. Subject to casualty, condemnation and/or Force Majeure Event, LESSEE agrees that it will diligently conduct its business on the Premises.

Section 21.4 No Illegal Activity. LESSEE agrees that it will not knowingly permit the Premises or any portion thereof to be used for any illegal purpose.

Section 21.5 Gambling. Without the consent of LESSOR which may be granted or withheld in LESSOR'S absolute discretion, this Lease is issued to LESSEE with the explicit condition that any type of gambling at the Premises is prohibited unless future zoning allows such use.

Section 21.6 Adult Entertainment. Without the consent of LESSOR, which may be granted or withheld in LESSOR'S absolute discretion no live adult entertainment establishments

(as defined in Section 15-156(a) of the City of Fort Lauderdale Code of Ordinances in effect as of the Commencement Date) shall be allowed at the Premises unless future zoning allows such use.

Section 21.7 Configuration. The current configuration of the Marina may not be altered by placing fill in any of the existing water areas without appropriate Governmental Approval, and the consent of the City Manager, which may be granted or withheld in the exercise of its reasonable discretion and within a reasonable time.

Section 21.8 Boat Show. LESSEE and all those claiming by, through or under LESSEE and their guests and invitees hereby agree and are put on notice that [\(subject to the terms of the Boat Show Lease\)](#) the Boat Show Tenant has the right of access to and use the Show Site during the Show Dates during each year during the term of the Boat Show Lease to operate the Boat Show [\(subject to the terms of the Boat Show Lease\)](#), which shall include, without limitation, the staging, mobilization, restoration, repair and cleaning activities of the Boat Show during the Show Dates (and thereafter for restoration or repairs, if necessary), including providing access to the Show Site during the Show Dates to their invitees, contractors, agents, employees, etc. (collectively, the **“Boat Show Activities”**). By the acceptance of a license, lease, deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of the Property, each such grantee, occupant and user automatically acknowledges, stipulates, and agrees that the Boat Show Activities and LESSEE’s right to conduct Special Functions and other events and activities including the Boat Show (including providing access to the Property to LESSEE, its invitees, contractors, agents, employees, etc.) as permitted by applicable law (and not otherwise restricted by restrictive agreements applicable to such portion of the Property) and such parties (x) will not restrict or interfere the right to use portions of the Shared Facilities during Special Functions (including, but not limited to, the Boat Show) as determined by the LESSEE (or its assigns), (y) agree such access shall not be deemed nuisances, noxious or offensive activities under any applicable covenants or at law generally, and (z) LESSEE and all those claiming by, through or under the LESSEE including but not limited to Unit Owners, and their guests, invitees, and occupants are estopped from objecting to such activity. [LESSEE acknowledges and agrees it is taking the premises subject to the Boat Show Lease and the rights of the tenant thereunder.](#)

ARTICLE 22

ASSIGNMENT AND SUBLEASING

Section 22.1 Assignment. Except as otherwise provided in this Lease, LESSEE shall not assign, convey or transfer (all of the foregoing, an **“Assignment”**) its interest in this Lease to any Person, without the express written consent of LESSOR or City Manager. LESSOR or City Manager shall have thirty (30) days from the date of written request from LESSEE to LESSOR requesting LESSOR or City Manager to consent to a proposed Assignment. In the event that LESSOR or City Manager fails to provide such consent or denial within such 30-day period, LESSEE shall deliver written notice to LESSOR advising LESSOR that LESSOR has not responded to LESSEE within the required 30-day period and LESSOR shall have an additional ten (10) days thereafter to respond to LESSEE with such approval or disapproval. In the event that LESSOR fails to respond after the expiration of the additional 10-day period, LESSOR shall be deemed to have approved LESSEE's request. LESSEE may create Phased Parcels pursuant to the applicable Phased Leases as contemplated by this Lease without same being deemed to be an Assignment. Any Assignment set forth above shall not be valid until LESSOR has consented or

is deemed to have consented to such Assignment and there shall have been delivered to LESSOR a true copy of the instrument effecting such Assignment, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease on LESSEE's part to be performed for matters that arise after the effective date of the Assignment. After the aforesaid instruments have been delivered to LESSOR and the City Manager has consented (or deemed to have consented) to such Assignment, then from and after the effective date of the Assignment, the assigning party shall be released of all obligations under this Lease for matters arising after the effective date of the Assignment, but shall remain liable to LESSOR for all obligations under this Lease for matters that arose or became due prior to the effective date of the Assignment. The factors upon which LESSOR shall base its decision on whether to grant consent under this Section 22.1 (to the extent consent is required) will be limited to whether (i) the proposed assignee and/or any of the direct or indirect principals of such proposed assignee (as may be set forth in the certification to LESSOR by a certified public accountant) meets standards of creditworthiness and financial resource of at least an aggregate minimum net worth of \$10,000,000 upon such proposed assignee acquiring the rights to this Lease which may include the consideration (exclusive of third party financing) being paid by such assignee for such assignment; (ii) the proposed assignee has the reasonable ability to perform the obligations of LESSEE, but as to financial matters, only for reasonably current financial obligations under this Lease, provided none of the monetary obligations under this Lease are delinquent; and (iii) the proposed assignee has prior related business experience for operating property with uses similar to those contemplated in this Lease or as existing at the time of proposed Assignment (or has retained a manager who has such business experience for a length of time of at least five (5) years).

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

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

Additionally, except for Permitted Transfers, the City Manager shall have the right to review and approve any assignment of this Lease and LESSOR shall be entitled to be reimbursed for the bona fide third party costs of LESSOR in connection with a review of each such applicable request for assignment in an amount which shall be not less than Five Thousand Dollars (\$5,000) nor more than Twenty Thousand Dollars (\$20,000) in connection with each such assignment request.

Any Assignment or transfer authorized in this Section 22.1 shall be deemed a “**Permitted Transfer**.”

Section 22.2 Subletting. LESSEE may sublet all or portions of the Premises and/or the Improvements, or grant licenses or concessions thereupon without the written consent of LESSOR; provided however, that subleases to Affiliates of LESSEE, subject to same complying with subsection (c) of the definition of Gross Revenue (and food and beverage lease/concession agreement/management agreements with Affiliates of LESSEE) will require the review and approval of LESSOR (as to whether rent is Fair Market Value Rent), and that when a Sublessee requests LESSOR to provide a Non-Disturbance Agreement in connection with such Sublease (in compliance with Section 22.3), then LESSOR through the City Manager shall have the right to approve such Sublessee and the Sublease in connection with giving such Non-Disturbance Agreement, which approval shall be given in City Manager’s reasonable discretion or disapproved specifying in reasonable detail the basis for such disapproval within thirty (30) days of request for such approval. In determining whether to approve or not approve such Sublessee and Sublease pursuant to the preceding sentence, the City Manager may consider the specific business experience of the Sublessee (or its managers, if applicable, who, if relying on the business experience of the manager versus the Sublessee, then such management agreement with such manager must have a minimum term of one (1) year), the ability of such Sublessee to carry out the purpose or activity of the Sublease, and as to financial obligations, the ability to perform only the reasonably current financial obligations under the Sublease, the reputation of the Sublessee, the rent payable pursuant to the Sublease being for not less than the Fair Market Value Rent and whether the Sublease complies with the requirements of a Sublease in Section 22.3. Any (i) sublease, sub-license or sub-concession, is throughout this Lease referred to as a “**Sublease**”; (ii) sub-sublease, sub-sub-license or sub-sub-concession is throughout this Lease referred to as a “**Sub-Sublease**”; (iii) Sublessee leasing pursuant to a Sublease is referred to as a “**Sublessee**”; and (iv) any Sub-Sublessee leasing pursuant to a Sub-Sublease is referred to as “**Sub-Sublessee**”. Each such Sublease or Sub-Sublease entered into after the Commencement Date shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions and shall be subject to the terms of any nondisturbance agreement between LESSOR and such Sublessee or Sub-Sublessee (as applicable). That in connection with any Sublease or any more remote interest in the Premises, LESSEE shall notify LESSOR if the party leasing a portion of the Premises or any more remote interest therein is an Affiliate of LESSEE.

No Sublease or Sub-Sublease shall relieve LESSEE from liability for any of its obligations hereunder, and in the event of any Sublease or Sub-Sublease, LESSEE shall continue to remain primarily liable for all financial obligations pursuant to this Lease and for the performance and observance of all non-financial obligations herein contained.

Section 22.3 Recognition of Sublease. Upon LESSEE’s written request (or Sublessee’s written request if provided with the written consent of LESSEE), LESSOR (if required), within thirty (30) days of the request, will execute and deliver, substantially in the form attached hereto as **Exhibit D-1**, and suitable for recording, a separate Non-Disturbance Agreement with each Sublessee named in such request, which Sublease (i) provides for an annual rental equal to or in excess of at least one hundred percent (100%) of the Pro Rata Qualifying Rent; (ii) such

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

Section 22.4 Recognition of Sub-Sublease. At Sublessee's or Sub-Sublessee's written request (provided LESSEE's written consent has been provided) and provided the Sublessee has consented (to the extent required by such Sublease and the request is made by the Sub-Sublessee), LESSOR, within 30 days after receiving the request, will execute and deliver, substantially in form attached hereto as **Exhibit J-2** and suitable for recording, a separate Non-Disturbance Agreement with each Sub-Sublessee named in such request whose Sub-Sublease (i) provides for an annual rent equal to or in excess of at least one hundred percent (100%) of the Pro Rata Qualifying Rent for that Sub-Sublease; (ii) such Sub-Sublease is in a form request by Sub-Sublessee consistent with **Exhibit I-2** or such other form reasonably acceptable to the City Manager and LESSEE; and (iii) has a term not in excess of the remainder of the Term of this Lease, which Non-Disturbance Agreement will provide that LESSOR will not terminate such Sub-Sublease or the leasehold estate created thereunder nor disturb such Sub-Sublessee's (and its Sub-Subleasehold Mortgagee who has a Non-Disturbance Agreement) possession and rights thereunder upon any termination of this Lease and upon any such termination as to a Sub-Sublessee (and its Sub-Subleasehold Mortgagee

who has a Non-Disturbance Agreement) when both the Sublessee and LESSEE are in default beyond all applicable cure periods, and LESSOR shall thereafter recognize the Sub-Sublease as a direct lease between LESSOR and the Sub-Sublessee as to the Sub-Sublease unless such Sub-Sublessee shall then be in default under its Sub-Sublease and the time to cure such default available to such Sub-Sublessee and the cure period provided any Sub-Subleasehold Mortgagee of said Sub-Sublease shall have expired or any Sub-Subleasehold Mortgagees of such Sub-Sublease with whom LESSOR has signed a Non-Disturbance Agreement has expired; provided that in such Non-Disturbance Agreement the Sub-Sublessee and Sub-Subleasehold Mortgagee who has a Non-Disturbance Agreement shall agree to attorn to LESSOR and its successors and assigns in case of any termination of this Lease and any applicable Sublease. The Sub-Sublessee under any Sub-Sublease which does not meet the foregoing criteria in Section 22.4(i)-(iii) above may also receive a Non-Disturbance Agreement, provided that LESSEE, Sublessee, Sub-Sublessee and the City Manager have consented to same. Also upon any termination of this Lease and the Sublease, the recognition of the Sub-Sublessee in its Sub-Sublease as a direct lease between LESSOR and such Sub-Sublessee (or the Sub-Subleasehold Mortgagee, as applicable, to the extent it becomes the Sub-Sublessee), shall remain as a direct lease between LESSOR and such Sub-Sublessee (on the same terms as the Sub-Sublease) or, at the option of LESSOR (which may be exercised at any time thereafter) LESSOR may enter into a new lease for the Sub-Subleased Premises as a primary lease between LESSOR and a third party (“Third Party Sub-Sublessor”) and LESSOR will assign its interest in the Sub-Sublease to the Third Party Sub-Sublessor, whereupon the Sub-Sublease shall again be deemed to be a Sub-Sublease between the Sub-Sublessee and Third Party Sub-Sublessor and such Third Party Sub-Sublessor shall execute a Sub-Sublease on the same terms as the existing Sub-Sublease, whereupon the Sub-Sublease between Third Party Sub-Sublessor and the Sub-Sublessee shall be deemed a Sub-Sublease and a new Non-Disturbance Agreements shall be executed by LESSOR, Third Party Sub-Sublessor (if applicable) and Sub-Sublessee. Notwithstanding the provisions of the immediately preceding sentence, in the event that the Sublease was terminated and LESSOR determines that it would like the Sub-Sublease to be a Sublease rather than a Sub-Sublease as provided in the immediately preceding sentence, then the immediately preceding sentence shall be deemed amended to provide that the Third Party Sub-Sublessor will enter into a Sublease with the Sub-Sublessee, whereupon such Sublease will be on the same terms and provisions as the Sub-Sublease and there will be no requirement for the Third Party Sub-Sublessor to enter into a lease with a Third Party Sub-Sublessor and such Third Party Sublessor to enter into a Sub-Sublease with the Sub-Sublessee and LESSOR, Third Party Sublessor and Sub-Sublessee will execute a new Non-Disturbance Agreement reflecting the foregoing. In the event that a Sub-Sublease is submitted to LESSOR for which LESSEE, Sublessee and/or the Sub-Sublessee is requesting a Non-Disturbance Agreement, then prior to LESSOR being required to execute such Non-Disturbance Agreement, LESSEE shall provide a certification to LESSOR certifying that the provisions of Section 22.4(i) through (iii) have been satisfied.

Section 22.5 Provisions Applicable to Non-Disturbance Agreements for Subleases and Sub-Subleases. Whenever the City Manager’s consent is required, the City Manager shall either consent or specify the basis for City Manager’s disapproval within thirty (30) days of request for such approval or such consent shall be deemed given. All reasonable costs and expenses incurred by LESSOR to review and approve or decline a request for a Non-Disturbance Agreement in connection with a Sublease and/or Sub-Sublease as requested by LESSEE shall be paid by the

requesting Sublessee or Sub-Sublessee to LESSOR prior to delivery of the requested Non-Disturbance Agreement, provided that the costs of such reimbursement shall not exceed \$1,500.

Section 22.6 Phased Leases. LESSEE, at its option, may elect to enter into Phased Lease(s) from time to time to facilitate the development and operation of the various components of the Bahia Mar Complex in phases, subject to the terms and conditions hereof. Accordingly, if LESSEE desires to enter into any Phased Lease from time to time, LESSEE shall so notify City of such election pursuant to this Section and the following provisions shall apply:

(a) LESSEE, LESSOR and the Phased Lessee shall, within sixty (60) days after LESSEE's request or such later time as LESSEE may request, execute a Phased Lease Agreement substantially in the form attached hereto in **Exhibit G**. The final form of Phased Lease to be executed by LESSOR and the Phased Lessee shall be reasonably acceptable to the City.

(b) Any transferee of LESSEE's interest in the applicable Phased Parcel shall be reasonably acceptable to City (recognizing that a transfer of LESSEE's interest in the applicable Phased Parcel to an Affiliate of the LESSEE shall be deemed acceptable to the City) and shall be obligated to comply with the terms and provisions of the Phased Lease and shall be subject to the remedies and rights available to LESSOR thereunder in the event such transferee fails to perform its obligations thereunder. The term (inclusive of any extensions thereof) of any Phased Lease shall not exceed the earlier of (i) fifty (50) year initial term with a fifty (50) year renewal term, or (ii) the term of this Lease with any remaining renewal options plus ten (10) years.

(c) Each Phased Lease shall specify the allocation of the Base Rent, Additional Rent and any other payments under this Lease to be paid to LESSOR thereunder, provided that (i) the sum of the Base Rent allocated under the Phased Lease and this Lease shall equal the total Base Rent required by this Lease, and (ii) the Base Rent shall be allocated between this Lease and Phased Lease in a manner which is mutually acceptable to LESSOR and LESSEE based on relative values or in any other fair and equitable manner.

(d) For each Phased Lease, LESSOR shall be entitled to receive all Base Rent and all Additional Rent due and owing under such Phased Lease.

(e) Notwithstanding anything contained in this Lease, upon the execution of a Phased Lease, neither LESSEE nor LESSOR shall be obligated to perform any obligation under this Lease to the extent such obligation pertains to, or is to be performed on, any portion of the Phased Parcel leased pursuant to such Phased Lease, and LESSEE and LESSOR shall be automatically released from any and all such obligations (including, without limitation, any obligation to (x) pay any rent allocated to such Phased Lease and (y) maintain insurance for such Phased Parcel demised under the Phased Lease.

(f) Each Phased Lease shall include provisions similar to the above confirming that the Phased Lessee under such Phased Lease shall not be obligated to perform any obligation under this Lease or any other Phased Lease.

(g) Each Phased Lessee under a Phased Lease shall have the right to (i) further assign the Phased Lease, in accordance with the terms thereof, and (ii) enter into Subleases,

licenses, concession agreements, management agreements, operating agreements and other arrangements for the purpose of implementing any use, operation or activity permitted under such Phased Lease, in accordance with the terms thereof.

ARTICLE 23
NAME

LESSEE's right to the name "BAHIA MAR" shall be preserved by LESSEE. LESSOR retains the right to use the name "BAHIA MAR" in its advertising as a publicly-owned facility, subject to complying with LESSEE's requirements to preserve the quality of its right to the trademark "Bahia Mar."

ARTICLE 24
SUBORDINATION

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

ARTICLE 25
ALTERATIONS AND ADDITIONS

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

ARTICLE 26
TITLE TO PROPERTY

LESSOR hereby covenants and agrees that provided LESSEE complies with the material terms of this Lease and is not in material default of any of its obligations hereunder beyond any applicable cure period, that LESSEE shall quietly and peaceably hold, possess and enjoy the Premises for the full term of this Lease without any let, hindrance or molestation from LESSOR, or any persons claiming by, through or under it, and said LESSOR hereby covenants and agrees that, as of the Commencement Date, LESSOR is seized of the Property in fee simple free and clear of all exceptions and encumbrances except for the Permitted Exceptions. LESSOR represents that it will not take action after the Commencement Date of this Lease that would change the status of LESSOR's title as of the Commencement Date without LESSEE's written consent in its sole discretion. After the Commencement Date, any asserted possessory rights of Sublessees or operators under the Original Lease, the Boat Show Lease, or disputes concerning LESSEE's decisions with respect to whether to continue same under this Lease, shall be LESSEE's exclusive

responsibility as provided in Section 5.1. LESSOR will defend the title to the Premises and occupation of same by LESSEE during the term of this Lease against all claims arising by, through, or under LESSOR and which fall within the covenants of this Article 26, and will, at its own cost, perfect or defend any and all legal proceedings or suits which may be instituted by any Person or Persons whomsoever, directly or indirectly falling within the covenants of this Article 26, except for the Permitted Exceptions.

ARTICLE 27

RENT

Section 27.1 Base Rent. Commencing on the Commencement Date, LESSEE shall pay to LESSOR the Base Rent with twenty-five percent (25%) of the Base Rent paid in equal quarterly installments on the first day of October, January, April and July (which shall be prorated with the Base Rent under the Original Lease for the first Lease Year if the Commencement Date is not on October 1).

Section 27.2 Percentage Sum.

27.2.1 LESSEE shall pay to LESSOR, as Additional Rent, an amount equal to the Percentage Sum.

27.2.2 Computation. Within one-hundred twenty (120) days after the end of each Lease Year, LESSEE shall pay to LESSOR a sum equal to the Percentage Sum, and shall further deliver to LESSOR at said time a detailed statement duly signed by a certified public accountant licensed in the State of Florida selected by LESSEE (and reasonably approved by LESSOR) setting forth an itemization of all Gross Revenue for the preceding Lease Year, which statement shall further show and indicate the Gross Revenue, if any, for each of the classifications set forth in the definition of Gross Revenue. Such detailed statement shall be similar in format with the detailed statements provided by LESSEE during the final Lease Year of the Original Lease.

Section 27.3 Records. LESSEE shall keep and maintain accurate records and complete books and records of account indicating all of LESSEE's Gross Revenue, together with any Affiliated Sublessee's of the Marina Gross Revenue in those instances under the terms hereof where the rent from such Sub-Tenant includes payment based on Gross Revenue of the Sublessee to be included in the Gross Revenue utilized for the calculation of the Percentage Sum due from LESSEE to LESSOR. Said records and statements of Gross Revenue shall be kept and maintained by LESSEE and/or Sublessees of the Marina in accordance with generally accepted accounting principles and shall be available to be examined by LESSOR or its agents, employees or representatives, and said records shall be kept and maintained, or a true and accurate copy thereof shall be kept and maintained in Miami-Dade County or Broward County for a period of at least five (5) years. In the event that LESSEE has intentionally, willfully and with the intent to defraud made any reports to LESSOR showing less Gross Revenue than actually received, such conduct and action on the part of LESSEE shall constitute a material breach of the covenants of this Lease by LESSEE, subject to the cure provisions set forth in Section 17 of this Lease. In the event that litigation has been timely instituted, the applicable records shall be maintained until all legal proceedings have been resolved.

Section 27.4 Licenses, Fees and Taxes. LESSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, county, and local taxes, assessments and fees, which are now or may hereafter be levied upon the Premises or the estate hereby granted, or upon LESSEE, or upon any of LESSEE's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all federal, state, county and local licenses and permits, now or hereafter required for the operation of the business conducted by LESSEE. To the extent permitted by law, LESSEE shall be permitted to pay any assessments in annual installments and to the extent such assessments may be payable in installments then LESSEE shall only be required to pay those installments which shall become due and payable during the Term. LESSEE shall have the right, at its sole expense, to contest the amount or validity, in whole or in part, of any taxes, assessments or fees by appropriate proceedings and by complying with all applicable requirements of the appropriate taxing authority. LESSOR shall not be required by LESSEE to join in any contest or proceedings unless the provisions of any law or regulations then in effect require that the proceedings be brought by or in the name of LESSOR, in which case LESSOR shall reasonably cooperate with LESSEE in such protest; provided, however, LESSEE shall pay all reasonable costs or expenses (including reasonable attorneys' fees and costs) incurred by LESSOR in conjunction therewith. As a condition to any such contest, LESSEE shall be required to institute appropriate proceedings on a timely basis and to have set aside the amount of money as required by applicable law for the payment of any contested taxes, assessments and fees including amounts necessary for the payment of interest and penalties, if applicable.

Section 27.5 Proration. Taxes, assessments and other expenses in connection with the Premises shall be prorated as of the last day of the Term with LESSEE being responsible for its obligations pursuant to this Lease for the period between the Commencement Date and the expiration of the Term. To the extent that there are real estate and/or personal property ad valorem taxes (or payment in lieu of real estate taxes, special or non-ad valorem assessments or a municipal service charge) of general applicability imposed upon the Premises or the estate hereby granted, or upon LESSEE, or upon any of LESSEE's property used in connection therewith during the Term, then LESSEE shall be obligated to pay any and all such taxes (or payment in lieu of taxes, special or non-ad valorem assessments and municipal service charge) of general applicability imposed during the Term prior to same becoming delinquent.

Section 27.6 Utilities. During the Term, LESSEE shall pay when due, all water, stormwater, utility and other expenses and fees which are now or hereafter charged or assessed with respect to the Premises, but is not responsible for expenses of LESSOR for utilities consumed by LESSOR pursuant to this Lease or for Sublessee's utilities (provided LESSEE shall require its Sublessees to pay such utilities to the extent LESSEE is not required to pay same pursuant to such Sublease). Subject to the foregoing, all such water, sewer, stormwater, garbage, utility and other public fees or charges shall be paid by LESSEE promptly prior to delinquency.

Section 27.7 Additional Rent. If LESSOR is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of LESSEE to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease which breach is not cured by LESSEE within the applicable cure period, LESSEE agrees

to pay the reasonable sums so paid or the reasonable expense so incurred, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Rent payable within thirty (30) calendar days after written demand therefor (together with reasonable supporting documentation of such sums expended) together with interest thereon at the Default Rate after said thirty (30) day period if not paid within such thirty (30) days period.

Section 27.8 Late Payments - Interest. LESSOR shall be entitled to collect interest at the Default Rate from the date any sum is due to LESSOR until the date paid on any amounts that are not paid within ten (10) days of their due date under this Lease. The right of LESSOR to require payment of such interest and the obligation of LESSEE to pay same shall be in addition to and not in lieu of the right of LESSOR to enforce other provisions herein and to pursue other remedies provided by law.

Section 27.9 Place of Payments. All payments of Rent required to be made by LESSEE to LESSOR under this Lease shall be made payable to LESSOR at Office of City Manager, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, or to such other office or address as may be substituted therefor pursuant to Section 30.1. All Rent (together with all applicable sales tax thereon) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

Section 27.10 Proration. LESSOR and LESSEE agree that the Rent payable under the Original Lease shall be prorated with the Rent payable under this Lease as of the Commencement Date.

ARTICLE 28 **FINANCIAL STATEMENT**

LESSEE herein shall furnish to LESSOR within one hundred twenty (120) days of LESSEE'S fiscal year end a GAAP-compliant audited financial report performed by a certified public accountant licensed to practice in the State of Florida, said financial report reflecting the results of operations and the financial condition of LESSEE for such fiscal year and said financial report may be consolidated with Affiliates of LESSEE (and with the Subtenant of the Marina) as long as LESSEE's financial information is separately disclosed.

ARTICLE 29 **BONDS FOR IMPROVEMENTS**

LESSEE shall furnish statutory payment and performance bonds pursuant to Florida Statute Chapter 713 and Florida Statute Chapter 255 (from itself, a Sublessee or their respective contractor(s)) for work on publicly owned property written by a Corporate Surety company on the U.S. Department of Treasury current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, as same may be updated from time to time, in the full amount of any contract entered into by LESSEE any/or any Sublessee for any major capital improvement valued in excess of \$10,000,000, with said bonds being executed and issued by a resident agent licensed by and having offices in the State of Florida representing such Corporate Surety at the time such capital improvements are to be constructed, conditioned upon

full and faithful performance by LESSEE or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify LESSOR as additional obligee. If the bonds are provided by the contractor, then to the extent commercially obtainable, the bond shall provide that a default by LESSEE or Sublessee as the case may be, in the performance of the contractor's contract, shall not be raised as a defense to LESSOR as one of the obligee's requiring performance of such construction contract by the surety.

ARTICLE 30
NOTICES

Section 30.1 Notices. All notices required by law or by this Lease to be given by one party to the other shall be in writing, and the same shall only be deemed given if forwarded as follows:

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

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

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

LESSEE: Rahn Bahia Mar, LLC
c/o TRR Bahia Mar, LLC
1175 N.E. 125th Street, Suite 102
North Miami, Florida 33161
Attn: James D. Tate, President

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

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

Section 30.2 Personal Delivery. The notice may also be served by personal delivery to LESSOR or LESSEE.

Section 30.3 Notice to Leasehold Mortgagee. The notice to any Leasehold Mortgagee, as provided in Article 16 (entitled *Leasehold Mortgagee*) will only be provided if such Leasehold Mortgagee has provided its contact information to LESSOR.

Section 30.4 Delivery. Notices delivered by personal delivery shall be deemed delivered when received, notices delivered by Certified Mail, returned receipt requested, shall be deemed delivered upon receipt or when receipt is refused, and notices sent by over-night courier delivery service shall be deemed delivered one business day after delivery to such over-night courier service.

ARTICLE 31 **TAXES AND ASSESSMENTS**

From and including the 2014 calendar year and thereafter during the term of this Lease, as may be extended, LESSEE will be required to pay all taxes and assessments lawfully imposed or levied against the Premises or LESSEE's personalty situated thereon, whether such taxes are levied against the land, improvements located thereon or personalty situated thereon. In the event that as a result of legislation or judicial precedent or decree subsequent to the year of the Commencement Date, any tax or assessment lawfully levied or imposed against the Premises or personalty situated thereon as aforesaid, ceases to be a lawful levy or in the event the land, improvements, or personalty are no longer are subject to such tax or assessment, then until such time as a replacement tax or assessment is imposed or levied, LESSEE agrees to continue to pay to LESSOR a "**Payment In Lieu of Taxes**" in an amount equal to the amount LESSOR would have realized from the imposition, levy and payment of such tax and assessment, had the continued imposition or levy of such taxes or assessments remained lawful on the land, improvements, or personalty comprising the Premises subject to same. At the time any such imposition or levy ceases to be lawful or the land, personalty, or improvements are no longer subject to same, the base assessed value of the object of the tax shall initially be determined in accordance with the assessed value on the tax rolls for the preceding year. Thereafter the assessed value of such object shall be adjusted by the overall change in the City's overall assessment roll, excluding changes due to new construction and annexation. Such Payments In Lieu of Taxes shall be in accordance with the City's net portion of the millage rates adopted by the taxing authorities in each successive year of the Term until taxes and assessments once again become lawful. In the case of non-ad valorem assessments, for the Payment In Lieu of Taxes, each assessment shall be determined as same were determined in the prior year. As to non-ad valorem assessments, thereafter, each assessment shall be adjusted in accordance with how such non-ad valorem assessments may otherwise be adjusted in a manner consistent with adjustments to the non-ad valorem assessment roll in future years for each such assessment in question and subject to any limitation on the amount of ad valorem tax due as generally applicable to such taxes on property not owned by the City which are subject to Payment in Lieu of Taxes. Such calculated contributions for the ad valorem and non-ad valorem assessments for each year shall be summed for such year's Payment In Lieu of Taxes. The Payment in Lieu of Taxes herein shall be payable in the same manner and within the same time frames as ad valorem taxes.

LESSOR and LESSEE agree that neither this Lease, nor the provisions of this Lease, shall operate to prevent, bar, or estop the City in its sovereign capacity from creating or imposing any generally applicable fees, charges, assessments, special assessments, or taxes, or any other types

of generally applicable measures to create municipal revenue (which are not discriminatorily applied against LESSEE or the Premises) which may become due and payable (i) upon the Premises, or personalty; or (ii) payable by LESSEE, Sublessees, Sub-Sublessees, or their respective visitors and guests; or (iii) payable as a result of activities, or in exchange for municipal services; or (iv) otherwise payable.

LESSOR shall not be entitled to make improvements to the Bahia Mar Complex without the written consent of LESSEE in its sole discretion, other than to cure breaches of LESSEE's obligations under this Lease not cured within the applicable cure period.

ARTICLE 32 **EXISTING OBLIGATIONS**

Section 32.1 Existing Sub-Leases and Existing Leasehold Loan. It is understood by and between LESSOR and LESSEE that this Lease is subject to the Permitted Exceptions.

The LESSOR and LESSEE agree that (i) the Existing Subleases shall remain in full force and effect as shall any subordination and non-disturbance agreements between LESSOR and any such subtenants with respect to such Existing Subleases and (ii), the Existing Leasehold Loans shall continue to encumber the LESSEE's interest in this Lease and any non-disturbance agreement(s) between the LESSOR and the holder of such Existing Leasehold Loans shall remain in full force and effect (except the Lease referred to therein shall be this Lease versus the Original Lease).

Section 32.2 Pumping Station. LESSOR shall have the responsibility of operating and maintaining all pumping stations and force mains (as may be modified, relocated, or constructed in the future; as and when accepted by the City or other applicable governmental or utility authority) located on the Premises, and LESSEE agrees that LESSOR shall have reasonable right of entry and access to the aforesaid facility to perform any necessary maintenance, and shall further be permitted to make any additional underground connections to the aforesaid pumping station consistent with its operation. LESSEE further agrees to allow no improvements which would prevent materially conflict or materially interfere with the aforesaid construction and maintenance.

ARTICLE 33 **MARINA OPERATION**

LESSOR shall be entitled to two (2) slips (each of a minimum dimension to accommodate a forty (40) foot vessel) in the Marina located on the Premises as designated by LESSEE (or its Sublessee) from time to time to be solely utilized by LESSOR for a marine patrol and/or fire boat(s), provided such use (i) is without charge; and (ii) LESSOR shall comply with the rules and regulations generally applicable to the Marina, including the removal of such boats from the Marina in connection with the Boat Show. During such period as LESSOR is not utilizing any of such two (2) slip(s), LESSEE (or its Sublessee) may, with the reasonable approval of the City Manager, utilize such unused slip(s) until a date which is five (5) business days after written notice from LESSOR to LESSEE that LESSOR desires to again utilize such two (2) slip(s) for marine patrol and/or for fire boat(s).

ARTICLE 34
EFFECTIVE DATE

The effective date of this Lease shall be the Commencement Date.

ARTICLE 35
HELICOPTER OPERATION

LESSOR or LESSEE may request for approval a helicopter pad to be constructed and operated at the Premises at a place to be mutually determined by LESSOR and LESSEE. Subject to compliance with all laws, ordinances, rules and regulations, the making of future legal arrangements therefore, and the City Commission appropriating funds as may be required, LESSOR may build and operate a helicopter pad to the extent the Federal Aviation Authority (“**FAA**”) approves use of airport funds for such purposes. The parties agree that the provisions of the preceding sentence are a non-binding statement of conditional future intent, are not a material inducement to LESSEE’s performance, do not constitute a covenant of LESSOR to budget appropriate funds of LESSOR, and do not constitute a pledge of LESSOR’s revenue, taxing power, or full faith and credit.

To the extent LESSEE desires such helicopter pad, whereby the cost to build and operate same is not funded by LESSOR, then LESSEE may, upon obtaining FAA approval and all other Governmental Approvals, build and operate same and will fund all of the costs thereof not funded by LESSOR. LESSEE shall not be entitled to a credit against Rent for funds expended to construct a helicopter pad, and shall not be entitled to otherwise recover such funds expended from LESSOR.

Any change to the Site Plan that is necessary to approve the helicopter pad location shall be reviewed and approved by the City Commission.

ARTICLE 36
FURTHER ASSISTANCE

Subject to compliance with all laws, ordinances, rules and regulations, the making of future legal arrangements therefore, and the City Commission appropriating funds as may be required, at the written request of LESSEE, LESSOR may assist in funding the construction of infrastructure, the parking garage and common areas which will be used by the Boat Show, or the public, or both, and LESSOR may assist in funding certain other capital improvements, all as may be agreed upon by LESSEE and LESSOR within all or portions of the Bahia Mar Complex. LESSOR may secure the repayment of such funding by the imposition of special assessments on all or certain portions of the Premises to fund capital improvements, by the creation of a special tax district, by the imposition of fees and charges, by a Non Ad Valorem Assessment, or by some other means as may be lawful and appropriate. The parties recognize that the provisions of this Article are a non-binding statement of conditional future intent, are not a material inducement to LESSEE’s performance, do not constitute a covenant of LESSOR to budget and appropriate funds of LESSOR, and do not constitute a pledge of LESSOR’s revenue, taxing power, or full faith and credit.

ARTICLE 37
CAPITAL IMPROVEMENTS RESERVE

Section 37.1 Reserve. LESSEE agrees that it shall comply with and fund any applicable capital improvement reserves required under any Leasehold Mortgage loan obtained by LESSEE in connection with the Premises.

Section 37.2 Reserve Credits. From and after the date as there are no Reserve Credit(s) and continuing annually for the remaining term of this Lease (as long as there are no Reserve Credit(s)), LESSEE shall on the 20th of each month after the Commencement Date, set aside funds into a capital improvement reserve account (“**CIRA**” or “**Capital Improvement Reserve Account**”). The amount funded into the CIRA shall be an amount equal to one-twelfth (1/12th) of that year’s Reserve Amount (prorated for any portion of a year, if applicable). The CIRA balance, from time to time, shall include interest earned, if any, on all funds in the CIRA. Expenditures shall be made from the CIRA only for Capital Improvements to the Premises as may be requested by LESSEE from time to time. All expenditures from the CIRA shall be in an amount not greater than that generally recognized in the community for good faith arm’s length transactions for the purchase or construction of such Capital Improvements. LESSEE shall, at LESSEE’s expense, furnish to LESSOR, on or before April 30th of each year during the Term of this Lease, a report prepared by an independent certified public accountant, licensed by the State of Florida, showing the balance of the CIRA as of December 31st of the preceding calendar year, together with a schedule describing the amount of the Reserve Credit, any amount expended for Capital Improvements and any expenditures from said CIRA and a statement that the funds so disbursed were for Capital Improvements.

If Capital Improvement expenditures are made in excess of the amount of the annual Reserve Amount (“**Excess Capital Improvement Amount**”), then the Reserve Credit(s) shall be increased by such Excess Capital Improvement Amount. As long as any Reserve Credit(s) exists, LESSEE shall not be required to fund any further sums into CIRA. The parties recognize that LESSEE has existing Reserve Credit(s) which shall increase as additional Capital Improvements are made and LESSEE shall not be required to fund Reserve Amounts while Reserve Credit(s) exist.

Any amounts in the CIRA not expended during a Lease Year (“**Unexpended Reserve**”) shall be carried forward to the following lease year. Unexpended Reserve amounts may, at any time, be used for Capital Improvements.

Section 37.3 Ten Year Reviews. On or before the first day of the eleventh Lease Year and before the first day of each eleventh Lease Year thereafter, LESSEE shall upon written request of LESSOR, have a licensed engineer perform an inspection of the material Improvements comprising the Premises to determine whether same are being properly maintained and whether any capital improvements are recommended as being required to be performed in connection with the Premises over the next ten (10) year period in order and to identify relevant useful life and whether replacement and/or capital improvements are needed in order for such improvements to be maintained in accordance with the requirements of this Lease (“**Capital Improvement Requirements**”). LESSEE shall furnish LESSOR with a copy of the report within ninety (90) days of completion. In the event that such engineering report determines that Capital Improvement

Requirements are required to be performed, then LESSEE agrees that it shall perform such Capital Improvement Requirements within the time parameters recommended in such Capital Improvement Report.

ARTICLE 38

MISCELLANEOUS PROVISIONS

Section 38.1 Governing Law. This Lease shall be interpreted and governed by and construed in accordance with the laws of or applicable to the State of Florida. Broward County, Florida is the agreed upon venue.

Section 38.2 Master Declaration. LESSEE and LESSOR shall enter into a Declaration of Covenants, Restrictions and Easement for Bahia Mar Complex as a covenant running with the land as may be amended from time to time (the “**Master Declaration**”) which creates and imposes various perpetual easements (including, but not limited to, ingress, egress, access, utility, use of the underground garage, below and above ground parking spaces and drives, encroachment easements for structural components for improvements, temporary construction easements, and air rights easements) for the benefit of the Premises, Phased Parcels and Improvements thereon), restrictions and covenants providing (i) for the common use and maintenance of shared areas and facilities within the overall Bahia Mar Complex (including without limitation, foundation and encroachment easements and easements for walkways, promenades, driveways, park area, public areas, etc.) to ensure that, notwithstanding the multiple uses of the Premises, the common and shared infrastructure, utilities, access and other areas intended to benefit portions of the Bahia Mar Complex intended to be served thereby; and (ii) for common area maintenance and allocating the costs thereof to the various portions of the Bahia Mar Complex and providing lien rights to enforce such payment. The Master Declaration, when executed, shall be a Permitted Exception. LESSEE (or an association created by LESSEE) shall, at all times, own and manage, enforce the covenants and restrictions, and maintain all of the common areas created thereunder including the Promenade. The Master Declaration shall include a covenant and restriction that the Promenade will (i) include space devoted to a boardwalk, landscaping and other amenities as shown on **Exhibit H**, as same may be amended pursuant to this Lease; and (ii) be reasonably available for access and use by LESSEE, Sublessees, Sub-Sublessees, and their respective customers, guests and invitees as may be authorized by LESSEE, and during Permitted Times which will expressly allow the non-exclusive use of certain portions of the Promenade by general members of the public; subject always however, to the following continuing conditions and limitations:

(i) The non-exclusive use of the Promenade by general members of the public shall not create, and shall never be construed or interpreted to create, a dedication to the public; notwithstanding the foregoing however, members of the public shall have non-exclusive use of certain portions of the Promenade and ingress and egress over certain portions of the Promenade for pedestrian traffic, subject to the provisions of this Section 38.2 and the Master Declaration;

(ii) LESSEE shall, subject to the criteria to be set forth in the Master Declaration, be exclusively able to restrict, limit, or prevent access to the Promenade (or any portion thereof) to any specific member(s) of the public as LESSEE may deem appropriate to avoid loitering, creating a nuisance, restricting access during Special Functions and/or otherwise

violating the rules and regulations adopted with respect to the Promenade, such that LESSEE retains at all times the right and ability to seek to enforce the foregoing and laws related to trespass;

(iii) The Promenade shall not be, nor shall it ever be by reason of provisions of this Lease (or the provisions set forth in the Master Declaration consistent with the terms hereof), a public forum, limited public forum, or any other type of public forum as may exist now or in the future for purposes of the exercise of rights pursuant to the First Amendment to the United States Constitution and any companion provision under the Florida Constitution. The Promenade shall also be subject to the easement rights granted under the Master Declaration;

(iv) The Promenade and its use shall be and remain subject to rules and regulations as LESSEE may impose from time to time and as may be set forth in the Master Declaration;

(v) The use of the Promenade by the public shall be limited to Permitted Times, and may be closed to the public partially or entirely during Special Functions;

(vi) LESSEE shall have the right (but not the obligation) to place cameras and record activities, conduct surveillance, and provide security functions and other security related activities as LESSEE deems appropriate;

(vii) Use of the Promenade shall be subject to temporary disruption as LESSEE may reasonably designate in connection with activities LESSEE conducts, such as construction or repairs, the Boat Show and other activities conducted on portions of the Bahia Mar Complex as shall be determined from time to time by LESSEE or as may be provided in the Master Declaration;

(viii) Use of the Promenade shall be in its then "AS IS" condition and any party using the Promenade does so at their own risk;

(ix) The City and LESSOR shall not have the right, without the written consent of LESSEE (in its sole discretion), to make improvements upon the Bahia Mar Complex as provided in Article 31;

(x) Recognize the Boat Show Lease and the right of the Boat Show Tenant to conduct the Boat Show in accordance with the Boat Show Lease.

(xi) LESSEE shall be able to enforce the covenants and restrictions described in this Section 38.2; and additionally, LESSOR (and no third party) may enforce the rights of general public to the non-exclusive use of certain portions of the Promenade as contemplated in Section 38.2 and as shall be set forth in the Master Declaration; and

(xii) While the intent of the covenant and provision is to ensure that the Promenade remains a signature element of the Bahia Mar Complex, for the general users described in this Section 38.2 during Permitted Times described above, it shall nevertheless be subject to the foregoing conditions and continuing provisions.

The terms of such Master Declaration shall be prepared by LESSEE and shall be subject to the approval by the City Manager and LESSEE and, after such approval of such Master Declaration, it shall be executed and recorded in the public records of Broward County, Florida. The Master Declaration shall be a covenant running with the Property in perpetuity.

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

Section 38.3 RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

Section 38.4 Force Majeure Event. For the purpose of any of the provisions of this Lease, neither LESSOR nor LESSEE, as the case may be, shall be considered in breach of or in default in any of its obligations under this Lease in the event of any Force Majeure Event; it being the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure Event, the time or times for the performance of the covenants and provisions of LESSEE of this Lease shall be excused and extended for the period of such delay. Except as otherwise set forth in this Lease, this provision shall not apply to payment of Rent, taxes, insurance and other monetary obligations.

Section 38.5 Assignability and Binding Effect. Subject to all provisions respecting the rights of assignment and subleasing, this Lease shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto.

Section 38.6 Amendments. LESSOR and LESSEE by mutual agreement shall have the right but not the obligation to amend this Lease. Such amendments shall be effective only when signed by LESSOR and LESSEE, and approved by the City Commission of the City of Fort Lauderdale, and shall thereafter be incorporated as a part of this Lease.

Section 38.7 Waiver of Jury Trial. The parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Lease, or arising out of, under or in connection with this Lease or any amendment or modification of this Lease, or any other agreement executed by and between the parties in connection with this Lease, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for LESSOR and LESSEE entering into this Lease.

Section 38.8 Severability. If any provision of this Lease, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, then, to the extent possible, and provided that none of the substantive rights, obligations or liabilities of any party are altered, the remainder of this Lease shall be construed as if such invalid part were never included herein and this Lease shall be and remain valid and enforceable to the fullest extent permitted by law. If,

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

Section 38.9 Captions; Exhibits. The captions contained in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or prescribe the scope of this Lease or the intent of any provisions thereof. All exhibits attached to this Lease and referenced herein are incorporated herein as if fully set forth in this Lease.

Section 38.10 Recording. The Memorandum of this Lease shall be recorded in the Public Records of Broward County, Florida, at the expense of LESSEE.

Section 38.11 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 38.12 Approvals and Consents. Wherever in this Lease the approval or consent of any Party (including LESSOR'S City Manager or other Authorized Representative) is required, it is understood and agreed that unless specifically stated to the contrary, such approval or consent shall be granted or withheld in LESSOR's or City Manager's (as applicable) reasonable discretion, within a reasonable time, and shall not be unreasonably withheld, conditioned or delayed. Except as may be otherwise specifically provided herein, the following actions under this Lease shall be taken or not taken by the City Manager in the discretion of the City Manager acting reasonably:

- (i) The exercise of LESSOR's rights of entry and inspection;
- (ii) The exercise of LESSOR's right to determine rent (by virtue of authorized adjustments herein) and Fair Market Value Rent to the extent provided in this Lease;
- (iii) The exercise of LESSOR's right or obligation to approve Subleases and Sub-subleases to the extent approval is required by this Lease;
- (iv) The exercise of LESSOR's right or obligation to execute, amend, and release easements, restrictive covenants, Master Declaration, and other similar documentation which have been reasonably approved as to form by the City Attorney;
- (v) The exercise of LESSOR's right or obligation to review and approve or not approve and specify the basis for such disapproval LESSEE's evidence of funding, where such evidence of funding is required;
- (vi) The exercise of LESSOR's right to calculate a payment in lieu of taxes and require LESSEE to pay same;
- (vii) The exercise of LESSOR's right or obligation to execute a joinder in applications for land development approvals or other governmental approvals (including permits) which are necessary for LESSEE to obtain from governmental authorities, and where such applications require evidence of the consent of the property owner;

(viii) The exercise of LESSOR's right to receive and approve or not approve and specify the basis for such disapproval the form of Certificates of Insurance, policies, limits, and coverages of insurance, bonds, and Environmental Assessments;

(ix) The exercise on behalf of LESSOR, LESSOR's right, upon consultation with the City Attorney, to declare a default, establish a reasonable time to cure the default, determine whether a proposed cure is reasonable, and the right to seek the approval of the City Commission to enforce any provision of this Lease;

(x) The exercise of LESSOR's right or obligation to approve the Legal Descriptions, Revised Legal Descriptions, and terms of any modification to terms of the form Phased Lease as contemplated pursuant to the terms of this Lease;

(xi) The exercise of LESSOR's rights with respect to Hazardous Substances as provided in Article 7, including inspections, tests, and procedures as provided therein;

(xii) The execution of Estoppel Statements and Non-Disturbance Agreements (or any modifications of the terms thereof) to be given by LESSOR under this Lease;

(xiii) The approval of Special Functions to the extent required by this Lease;

(xiv) The approval, if required, of any Subleases, Sub-Subleases, or any modification of the terms thereof;

(xv) The approval of any Assignment of this Lease to the extent required by this Lease; and

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

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

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

LESSOR's or City Manager's, as applicable, failure to respond after the expiration of the additional 10-day period shall be deemed an approval.

Section 38.13 Exercise of LESSOR or City Manager Acts as Fee Owner. LESSEE acknowledges that when LESSOR or City Manager acts or exercises any rights or obligations under this Lease, including without limitation the specific approval and consent rights of LESSOR or City Manager set forth herein, it is doing so in its capacity as the fee owner and LESSOR of the Premises and not in the exercise of its municipal regulatory authority, and that the role of LESSOR as a municipality (including its regulatory and sovereign powers) is separate and distinct from the role of LESSOR as the fee owner and LESSOR of the Premises under this Lease.

Section 38.14 Exculpation. It is the intent and agreement of the Parties hereto that only the parties as entities shall be responsible in any way for their respective obligations hereunder. In that regard, no officer, director, partner, trustee, representative, investor, official, representative, employee, agent, or attorney of any of the Parties to this Lease shall be personally liable for the performance of any obligation hereunder or for any other claim made hereunder or in any way in connection with this Lease, or any other matters contemplated herein, and any and all such personal liability, either at common law or in equity or by constitution or statute or other applicable law are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

Section 38.15 Attorneys' Fees. In the event of any dispute or litigation between the parties arising under this Lease, the non-prevailing Party shall be responsible for all costs and expenses of the prevailing party, including reasonable attorneys' fees and court costs, through all trial and appellate levels.

Section 38.16 Construction and Interpretation. Each of the Parties hereto and their counsel have reviewed and revised, or requested revisions to, this Lease, and the usual rule of construction that any ambiguities are to be resolved against the drafting Party shall be inapplicable in the construction and interpretation of this Lease and any amendments or exhibits to this Lease.

Section 38.17 Third Party Beneficiaries. Neither LESSEE nor LESSOR intend to directly or substantially benefit a third party by this Lease, other than Sublessee(s), Sub-Sublessee(s) and Leasehold Mortgagee(s) to the limited extent expressly stated herein or in any Non-Disturbance Agreement executed by LESSOR and subject to the conditions stated therein. Therefore, the parties agree that there are no other third party beneficiaries to this Lease and that no other third party shall be entitled to assert a claim against either Party based upon this Lease, other than such Sublessee(s), Sub-Sublessee(s) and Leasehold Mortgagee(s) to the limited extent expressly stated herein or in any Non-Disturbance Agreement executed by LESSOR and subject to the conditions stated herein.

Section 38.18 Estoppel Statement. The Parties agree that not more than three (3) times a year, upon not less than thirty(30) days prior request by a Party hereto, the other Party will deliver a statement in writing ("**Estoppel Statements**") certifying: (a) whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) to the best of the actual knowledge of the signor, whether any facts are

known that either Party is in default and no facts are known which would cause a Party to be in default under the provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either Party may reasonably request.

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

Section 38.19 Prior Agreements. This Lease incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with the provisions of this Lease.

Section 38.20 Further Assurances. Each Party will promptly cooperate each with the other and will execute and deliver any and all written further assurances and/or documents that are reasonably necessary, convenient, or desirable to evidence, complete or perfect (or any combination thereof) the transactions contemplated by this Lease, so long as no further assurance or document to be executed operates to impose any new or additional obligation or liability upon any party. The Parties will so perform all other acts that are reasonably necessary, convenient, or desirable for any such purpose, so long as no new or additional obligations or liabilities are incurred as a result thereof.

Section 38.21 LESSEE'S Acceptance of Premises. LESSEE acknowledges that the Original Lease and the preceding leases for the Premises have resulted in LESSOR being out of possession and operation of the Premises since the initial date of the Original Lease. As of the date of the Original Lease, except as set forth in this Section 39.21, LESSOR has made no warranty or representation as to the physical condition of the Premises or the current improvements thereon, and LESSEE is accepting such physical condition as of the Commencement Date "AS" and "WITH ALL FAULTS", other than for changes after such date caused by LESSOR which is not either approved in writing by LESSEE in its sole discretion or permitted to be made by LESSOR pursuant to this Lease. The Parties have agreed that LESSOR has made no warranties or representations as to whether or the extent to which Hazardous Substances may exist on the Premises (other than LESSOR has no actual knowledge of any violation of Hazardous Substances Laws except for those matters set forth in that certain Estoppel Letter dated April 30th, 2014), and LESSEE has assumed all responsibility for Hazardous Substances which exist on the Premises as of the Commencement Date (other than the oil spill previously disclosed in writing to LESSOR prior to the Commencement Date).

[Section 38.22 Notwithstanding anything herein to the contrary, the LESSEE shall be entitled to continue to operate the Property with the current uses of the Property until it is redeveloped pursuant to the Site Plan realizing that such redevelopment will occur in stages.](#)

ARTICLE 39
CITY GOVERNMENT

Section 39.1 Notwithstanding anything to the contrary in this Lease, the making of this Lease does not constitute an abrogation of LESSOR'S governmental police or land development regulatory powers, and LESSEE's obligations to comply with applicable law include LESSEE complying with all development approvals required by LESSOR in its capacity as a governmental authority.

Section 39.2 Neither this Lease, nor any of its provisions, shall prevent the City from enacting or seeking to enforce any rule, regulation, Ordinance or Charter provision which may affect the Premises, its uses, the Proposed Improvements, or the Improvements, regardless of whether such local law is the result of action by the City Commission, or by initiative (petition) and referendum, or by such other means as may be allowed in the future, provided same is of general application to property in the City and is not discriminatorily applied against LESSEE or the Premises.

Section 39.3 Whenever the City seeks to enforce any existing or future local municipal law, neither the provisions of subsections 39.1 or 39.2 shall waive or affect LESSEE's ability to (i) contest the validity or application of such acts; (ii) seek whatever constitutional, statutory, or equitable remedies as may be available to LESSEE; (iii) to assert whatever defenses or avoidances as may be available to LESSEE; or (iv) seek judicial or administrative review as may be available.

[SIGNATURE PAGE TO FOLLOW]

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

WITNESSES:

[Witness type/print name]

[Witness type/print name]

CITY OF FORT LAUDERDALE

By: _____
_____, Mayor

By: _____
_____, City Manager

ATTEST:

_____, City Clerk

Approved as to form:

_____, City Attorney

WITNESSES:

[Witness type/print name]

[Witness type/print name]

RAHN BAHIA MAR L.L.C., a Delaware limited liability company (successor-in-interest to Rahn Bahia Mar, Ltd., a Florida limited partnership)

By: _____
Name: _____
Title: _____

STATE OF FLORIDA:
COUNTY OF BROWARD:

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

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

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

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

Commission Number

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____, 20__, by _____, as the _____ of RAHN BAHIA MAR L.L.C, a Delaware limited liability company, on behalf of the company. He is personally known to me or produced _____ as identification.

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires: _____

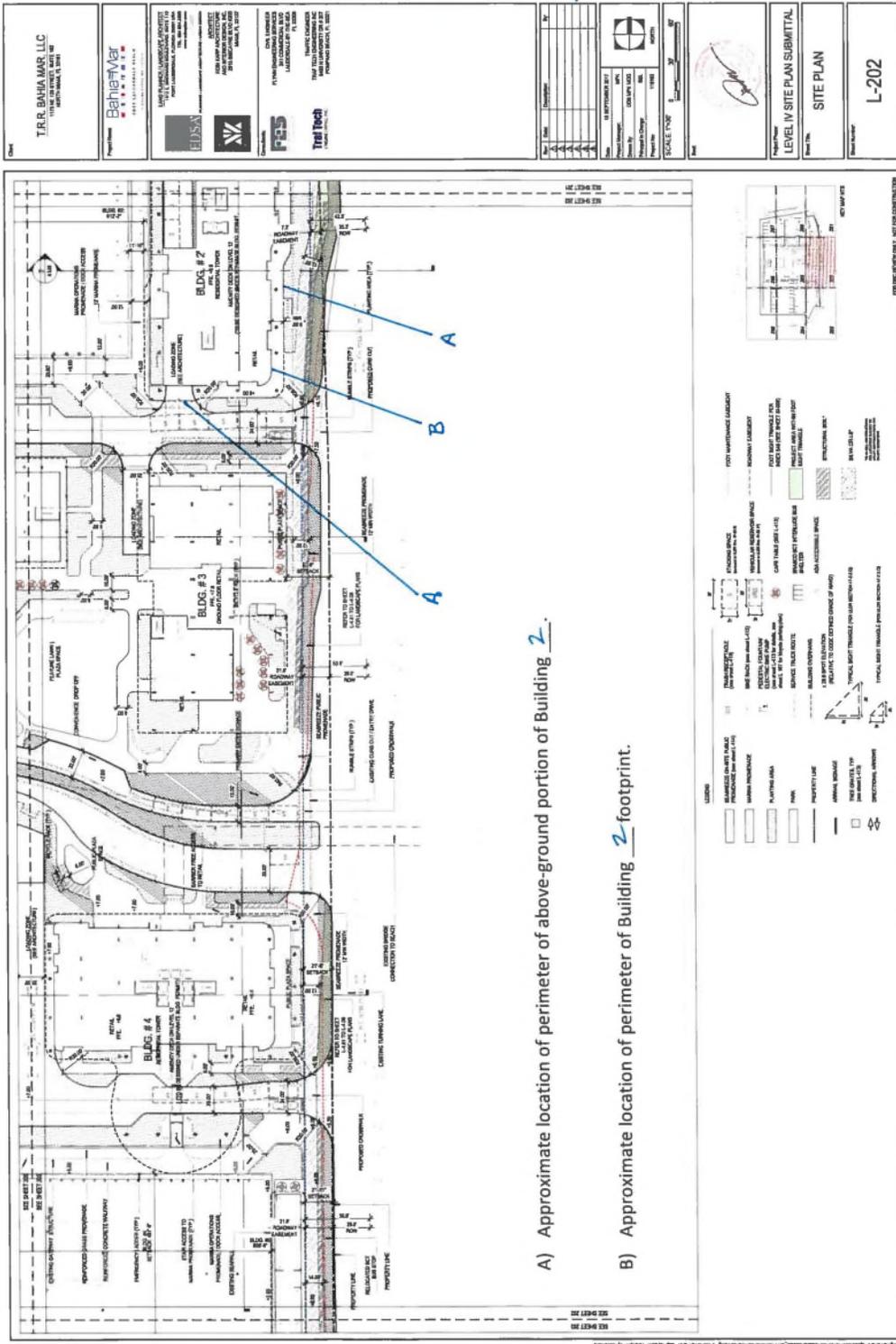
Commission Number

EXHIBIT A

PREMISES

Exhibit B-2(a)

Building 2 (1 of 2)

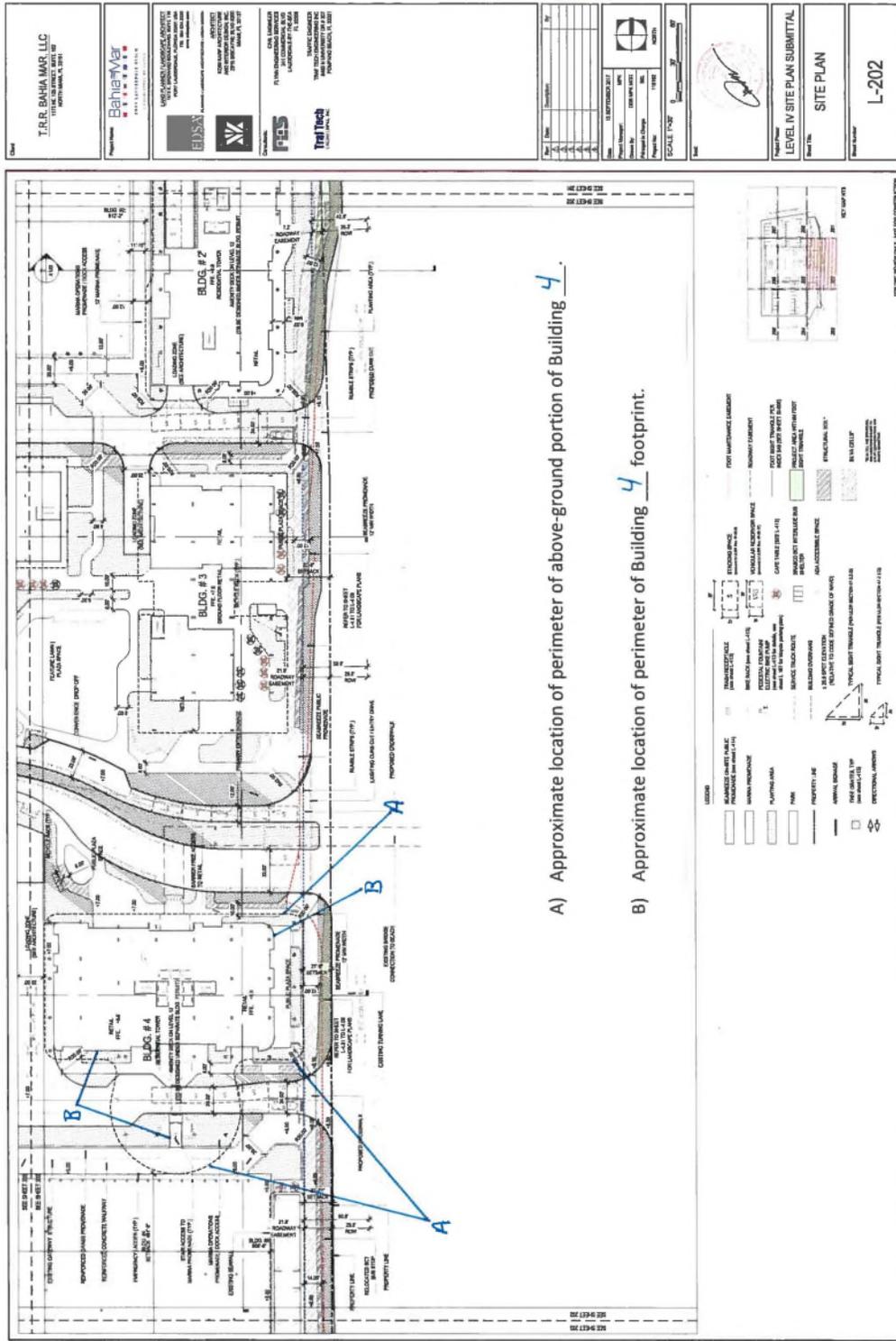


A) Approximate location of perimeter of above-ground portion of Building 2.

B) Approximate location of perimeter of Building 2 footprint.

Exhibit B-3

Building 4

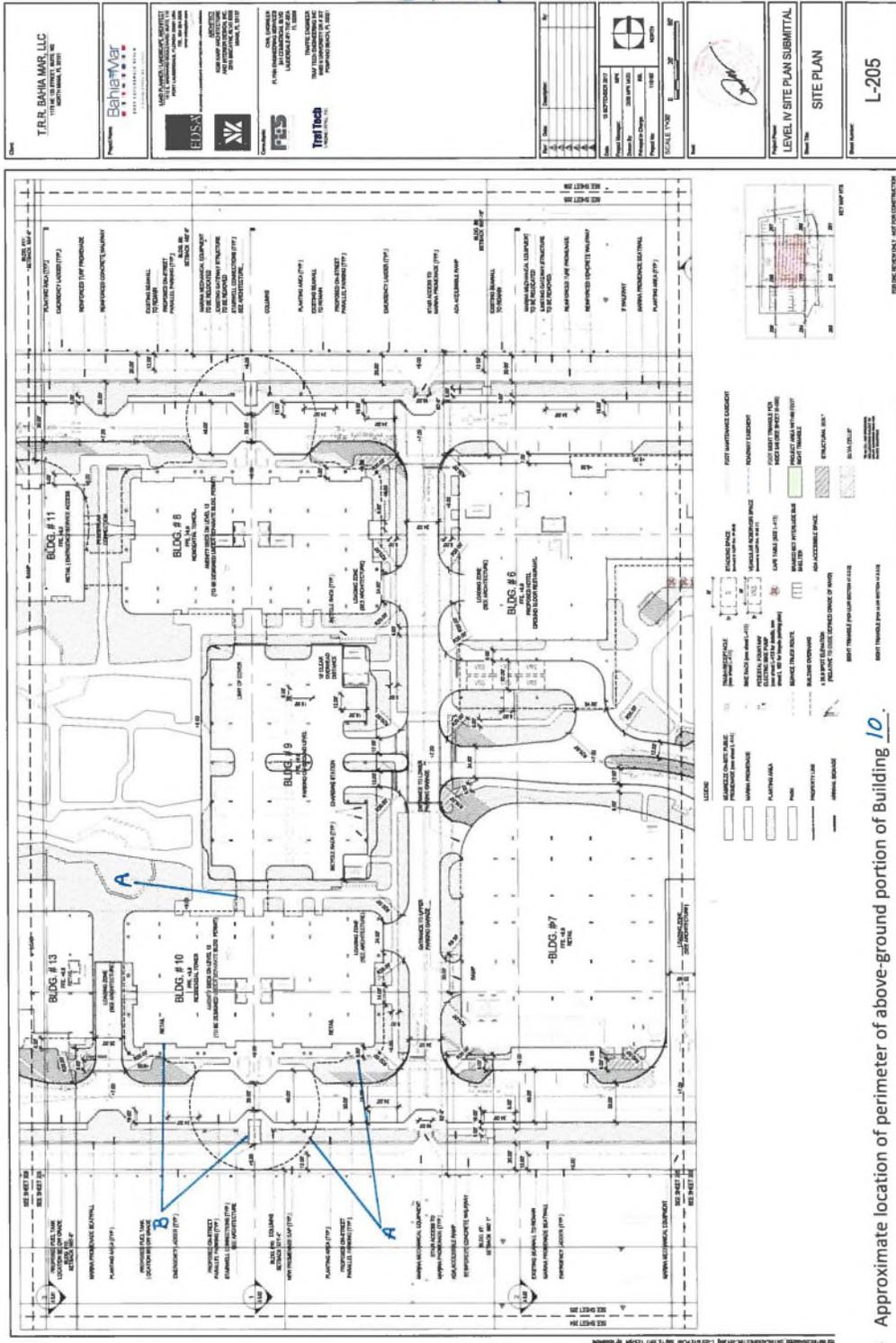


- A) Approximate location of perimeter of above-ground portion of Building 4.
- B) Approximate location of perimeter of Building 4 footprint.

43920129.35 43920129.37
37958.0003

Exhibit B.5

Building 10



A) Approximate location of perimeter of above-ground portion of Building 10.

B) Approximate location of perimeter of Building 10 footprint.

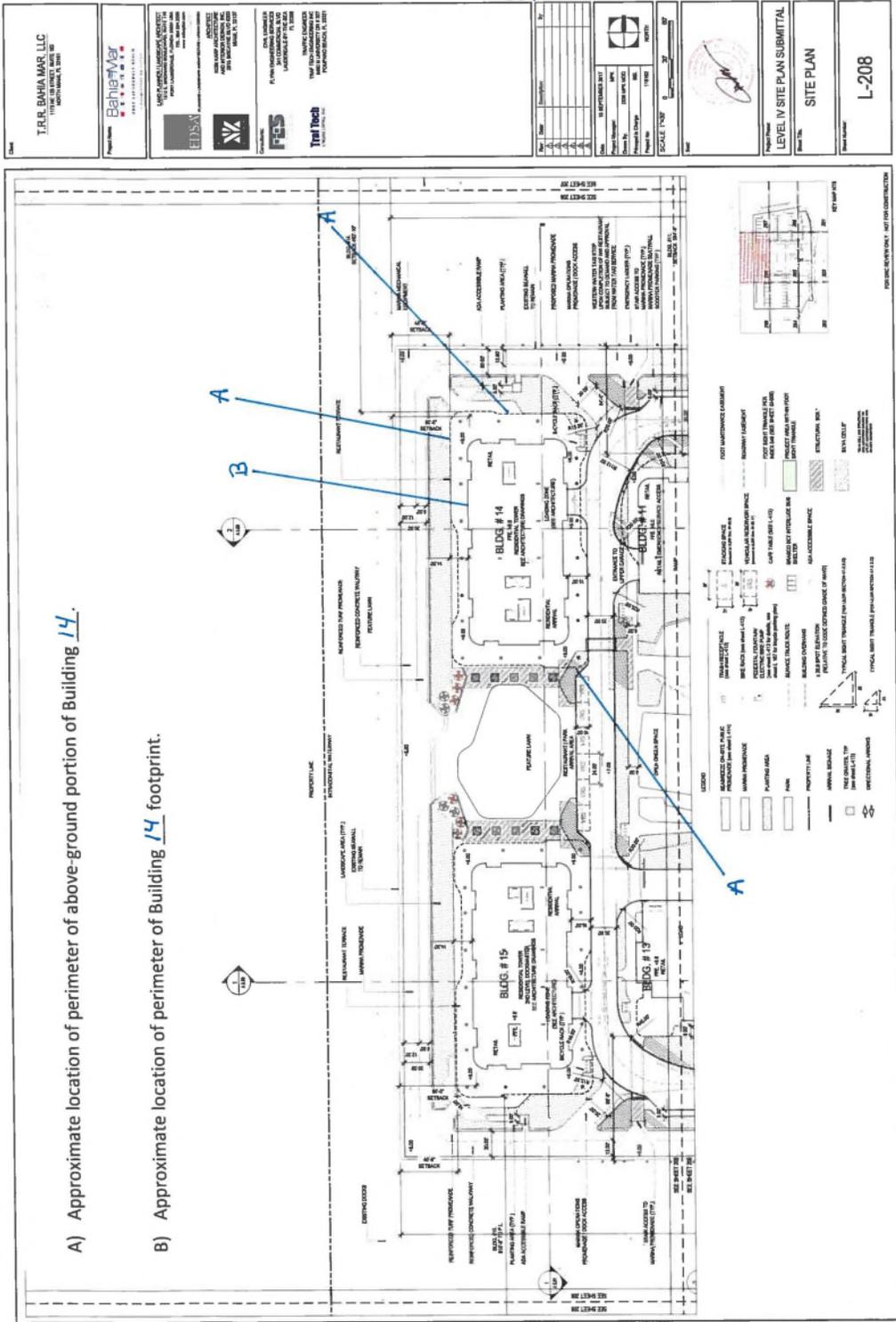
43920129.35 43920129.37
37958.0003

Exhibit B-6

Buildings 14

A) Approximate location of perimeter of above-ground portion of Building 14.

B) Approximate location of perimeter of Building 14 footprint.



T.R.R. BAHIA MAR LLC
 11700 E. BAYVIEW BLVD
 SUITE 100
 HOUSTON, TX 77055

BahiaMar
 11700 E. BAYVIEW BLVD
 SUITE 100
 HOUSTON, TX 77055

ARCHITECT
WATG
 11700 E. BAYVIEW BLVD
 SUITE 100
 HOUSTON, TX 77055

ENGINEER
PERKINS+WILL
 11700 E. BAYVIEW BLVD
 SUITE 100
 HOUSTON, TX 77055

SCALE 1/8" = 1'-0"
 0 10 20 30 40 50 60 70 80 90 100

LEVEL IV SITE PLAN SUBMITTAL
SITE PLAN
 L-208

Building 15

A) Approximate location of perimeter of above-ground portion of Building 15.

B) Approximate location of perimeter of Building 15 footprint.

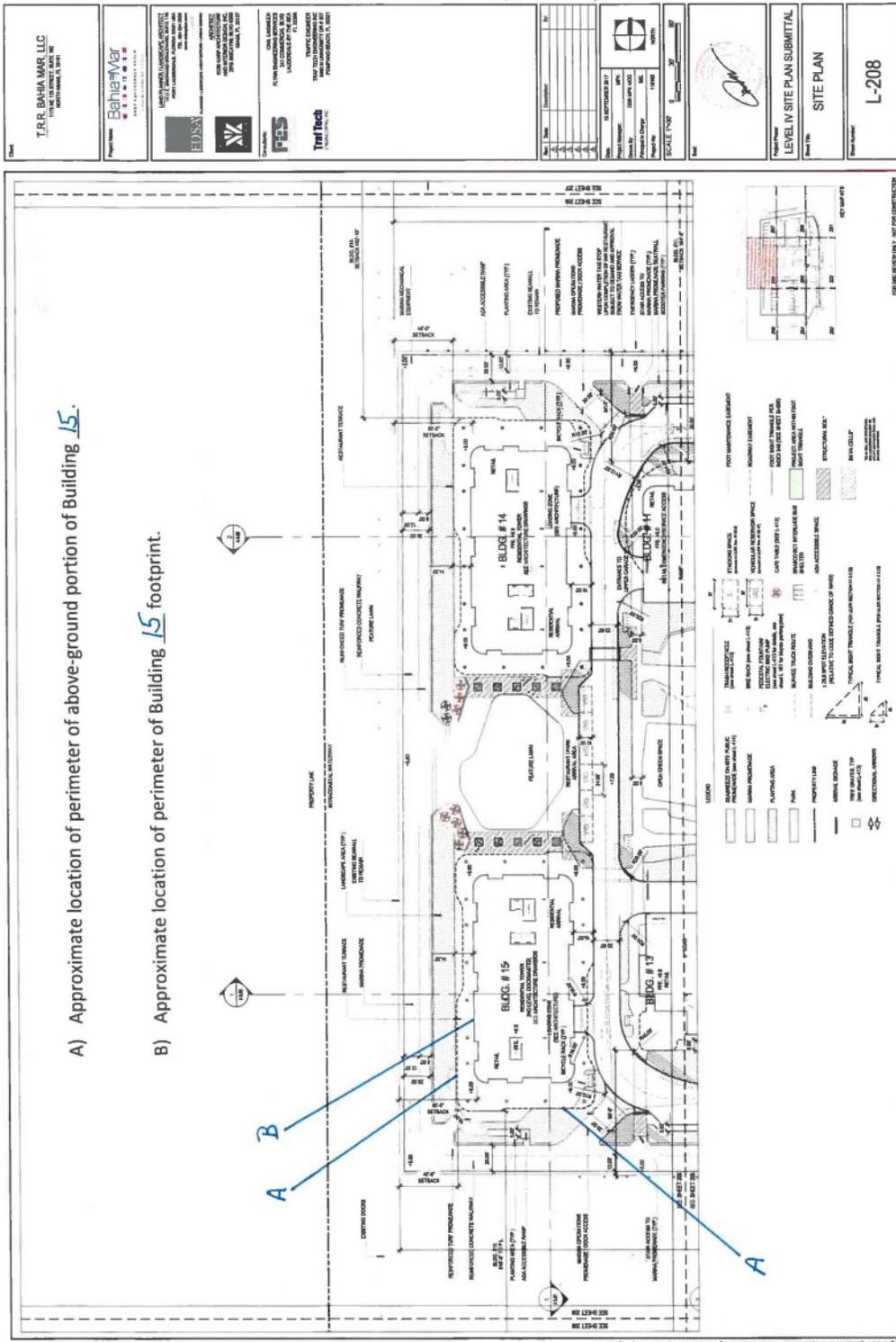


Exhibit B-7

EXHIBIT C
MEMORANDUM

EXHIBIT D-1

SUBLEASEHOLD NON-DISTURBANCE AGREEMENT

EXHIBIT D-2

SUB-SUBLEASEHOLD NON-DISTURBANCE AGREEMENT

EXHIBIT E-1

LEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT

EXHIBIT E-2

SUBLEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT

EXHIBIT E-3

SUB-SUBLEASEHOLD MORTGAGE NON-DISTURBANCE AGREEMENT

EXHIBIT F

PARKS

EXHIBIT G
PHASED LEASE FORM

EXHIBIT H
PROMENADE

EXHIBIT I-1

EXISTING SITE PLAN



43920129.35 43920129.37
 37958.0003

EXHIBIT I-2
PROPOSED MODIFIED SITE PLAN

EXHIBIT J-1
SUBLEASE FORM

EXHIBIT J-2
SUB-SUBLEASE FORM

EXHIBIT K

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



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

**SCHEDULED LOCATION POLLUTION LEGAL LIABILITY POLICY
DECLARATIONS**

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

Policy Number: 0309-0737

New/Renewal of: New

Item 1. Named Insured and Address:

**Rahn Bahia Mar L.L.C.
1175 NE 125th Street, Suite 102
Miami, FL 33161**

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

Item 3. Coverages and Coverage Section Limits and Deductibles:

This Policy covers only those Coverages stated below:

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

Coverage	Business Interruption- Deductible - Days	Each Incident Limit	Coverage Section Aggregate Limit
5. Business Interruption	5	\$10,000,000	\$10,000,000

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

ENV-SPL 00001 00 (02/12) Page 1 of 2
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EXHIBIT K

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

Item 5. Insured Locations:

801 Seabreeze Boulevard, Fort Lauderdale, FL

Item 6. Policy Premium: \$94,155

Item 7. Retroactive Date: 06/27/2014

Item 8. Notice of Pollution Incident or Claim:

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

All Other Notices:

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

Item 9. Broker:

Lockton Companies LLC
3601 SW 160th Ave., Suite 200
Miramar, FL 33027

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



President



Asst. Secretary



AUTHORIZED REPRESENTATIVE

Named Insured: Rahn Bahia Mar L.L.C.

Effective Date: June 27, 2014

12:01 A.M., Standard Time

SCHEDULE OF FORMS AND ENDORSEMENT

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

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

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

EXHIBIT L-1

EXISTING LEASEHOLD LOAN(S)

EXHIBIT L-2
EXISTING SUBLEASES

EXHIBIT M

PRIOR HAZARDOUS SUBSTANCE MATTERS

Document comparison by Workshare Compare on Tuesday, January 18, 2022
10:07:22 AM

Input:	
Document 1 ID	iManage://GMLAW-DMS.IMANAGE.WORK/Active/43920129/35
Description	#43920129v35<Active> - Master Lease / City of Fort Lauderdale / Rahn Bahia Mar
Document 2 ID	iManage://GMLAW-DMS.IMANAGE.WORK/Active/43920129/37
Description	#43920129v37<Active> - Master Lease / City of Fort Lauderdale / Rahn Bahia Mar
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	47
Deletions	32
Moved from	1
Moved to	1
Style change	0
Format changed	0

Total changes	81
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