SUB-LEASE AGREEMENT
ISHOF PENINSULA LLC

THIS SUB-LEASE AGREEMENT (hereinafter the "Lease" or 'Agreement"), made and entered into as of the date the last party signs this Sub-Lease Agreement (the "Effective Date") is by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, whose address is 100 North Andrews Ave., Fort Lauderdale, FL 33301 (hereinafter "LESSOR" or the "CITY" or "LANDLORD"),

AND

ISHOF PENINSULA LLC, a Florida limited liability company whose principal address is 1 Hall of Fame Drive, Fort Lauderdale, FL 33316 (hereinafter "LESSEE" or "Tenant" or "ISHOF"), each of which may be referred to individually as "Party" or jointly as "Parties".

WHEREAS, INTERNATIONAL SWIMMING HALL OF FAME, INC. is a Florida Not for Profit corporation (the "Parent Company") whose mission is to operate the International Swimming Hall of Fame Museum and Shrine; and

WHEREAS, LESSEE is a wholly owned subsidiary of the International Swimming Hall of Fame, Inc. and will maintain and operate a portion of the state of the art facilities on the Aquatic Center Peninsula which facilities will provide recreational, sporting and cultural facilities for the public at large ; and

WHEREAS, LESSOR finds that LESSEE's activities serve a significant public purpose and LESSOR wishes to encourage and assist the same; and

WHEREAS, Hall of Fame Partners, LLC ("HOFP"), a Florida limited liability company, submitted an unsolicited proposal to demolish the existing Hall of Fame Museum and Shrine and adjacent buildings and to construct an ocean rescue facility and to construct state of the art facilities to provide recreational, sporting and cultural facilities for the public at large on the Aquatic Center Peninsula (the "Project" or "Qualified Project"); and

WHEREAS, the City Commission finds that constructing recreational, sporting and cultural facilities for the public at large constitutes a public purpose; and

WHEREAS, on December 21, 2021, the City and HOFP entered into an interim agreement in accordance with Section 255.065(6), Florida Statutes, for the purposes of authorizing HOFP to commence project planning and development, design, environmental analysis, and other activities concerning the Project, including the availability of financing; and

WHEREAS, on September 19, 2023, the City Commission approved a Comprehensive Agreement with HOFP, which provides in part, that HOFP will cause to be constructed recreational, cultural and sporting facilities for the benefit of LESSEE; and

WHEREAS, the City Commission finds that the LESSEE's actions do not conflict with use by the public of any public land adjacent thereto; and

WHEREAS the City Commission adopted Resolution No. 23-298 on December 19, 2023, pursuant to Section 8.13 of the City Charter declaring its intent to lease the Leased Premises for a term not to exceed thirty (30) years; and

WHEREAS, in accordance with Section 8.13 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting of the City Commission held on January 23, 2024, for the purpose of permitting citizens and taxpayers the opportunity to review the proposed Lease and object to the execution, form or conditions of the proposed Lease; and

WHEREAS, by approval of the City Commission, the Mayor and the City Manager were authorized, empowered and directed to execute this Lease by adoption of Resolution No. 24-23, during a Public Hearing at its Regular Meeting on January 23, 2024; and

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LESSOR and LESSEE agree as follows:

ARTICLE 1 - LEASE OF LEASED PREMISES

1.1 **Lease**. The foregoing recitals are true and correct in all respects and are incorporated herein. On the terms and conditions set forth in this Lease, and in consideration of the LESSEE's periodic payment of rents and performance of all other terms and conditions of this Lease, the LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR and LESSOR grants LESSEE a possessory interest in and to the Leased Premises described below for the Term (hereinafter defined) subject to the terms and conditions set forth in this Lease.

1.2 **Leased Premises**. LESSOR leases the Leased Premises to LESSEE and LESSEE rent from LESSOR the Leased Premises located at 501 Seabreeze Blvd., Broward County, FL 33316, and described as follows:

All other portions of the Qualified Project less and except the Museum, Café, VIP Suites, Welcome Center and any other portions leased to the Parent Company all as located in the East or West Buildings of the Qualified Project, (as defined below) and less and except the areas described below, subject to the right, title and interest of HOFP and LESSOR under the Ground Lease and Master Facilities Lease. Both Parties acknowledge and agree to amend this Lease to more specifically define and clarify those portions of the Qualified Project that are subject to the terms of this Lease, provided such descriptions comply with the intent of the parties to the Comprehensive Agreement.

Whenever used herein, the term "Leased Premises" or "Premises" shall not include the real estate and does not include the land and improvements known as the Aquatic Center Improvements as defined in the Comprehensive Agreement, the Ocean Rescue facilities, the public dock the dry land training facility, training pool, lockers and shall exclude any other improvements, rights to concessions or other privileges retained by LESSOR or HOFP under the Comprehensive Agreement.

1.3 **Limitations on Grant of Possessory Interest**. The grant of possessory interest and rights hereunder by LESSOR to LESSEE is subject to the following:

1.3.1 Each and any condition, restriction, covenant, easement and/or limitation recorded against the Leased Premises, including, without limitation, the Dedication from the Trustees of the Internal Improvement Fund of the State of Florida recorded in Official Records Book 2611, Page 314 of the Public Records of Broward County, Florida and any future easement or covenants, limitations or restrictions on the Leased Premises related to or reasonably necessary for development of the Qualified Project (as defined in the Comprehensive Agreement) provided such matters do not materially interfere with LESSEE's use and enjoyment of the Leased Premises.

1.3.2 Existing or future land planning, land use or zoning laws, building codes, ordinances, statutes or regulations of any governmental entity or agency for the United States of America, State of Florida, Broward County or City of Fort Lauderdale, or any other governmental agency having jurisdiction over the Leased Premises and with legal authority to impose such restrictions.

1.3.3 LESSEE's satisfactory performance of all the terms and conditions contained in this Lease: and

1.3.4 Underground and overhead utilities facilities, including, but not limited to, water, wastewater, storm water and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

1.3.5 The reservation of rights, including the right to host (either directly or indirectly through concessionaires and/or other licensed third parties) events, shows and entertainment utilizing such of the improvements of the Leased Premises as is contemplated by and permissible under the CA (defined herein), prohibition on uses, parking, operation and management rights, revenue sharing, right of first refusal, exclusive leasing rights, development rights and other obligations, benefits, privileges, terms and conditions set forth in the Comprehensive Agreement dated October 24, 2023 by and between LESSOR and Hall of Fame Partners, LLC (the " CA" or the "Comprehensive Agreement"), Ground Lease dated 5/22/24 by and between LESSOR and Hall of Fame Partners LLC (the "Ground Lease") and the Master Facilities Lease Agreement dated 5/22/24 by and between LESSOR and Hall of Fame Partners, LLC (the "Master Facilities Lease") and such other agreements related to the Project (collectively the "Agreements"). LESSEE shall comply with all the terms and conditions of the Agreements to the extent such terms and conditions requires the cooperation and compliance of LESSEE and failure to do so shall be an event of default under this Lease.

1.3.6 Rules and regulations that may be adopted by LESSOR and/or HOFP, or its affiliates, regarding operation, management and use of the Qualified Project (as defined in the CA).

1.4 **Quiet Enjoyment**. LESSEE, while paying Rent (hereinafter defined) and Additional Rent (hereinafter defined) and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from LESSOR subject to the terms and provisions of this Lease and the Agreements.

1.5 **Contract Administrator**. The contract administrator for LESSOR under this Lease

shall be the City Manager of LESSOR (the "City Manager"), or his or her designee (the "Lessor Contract Administrator"). In the administration of this Lease, as contrasted with matters in this Lease where the LESSOR is required to act, LESSEE may rely upon instructions or determinations made by the City Manager or the Lessor Contract Administrator, as the case may be. The contract administrator for the LESSEE under this Lease shall be the Chief Executive Officer of LESSEE. (the "Lessee Contract Administrator").

1.6 **Condition of the Leased Premises**. The LESSEE stipulates and agrees that it is familiar with the condition of the Leased Premises and therefore accepts the Leased Premises in "AS IS" condition without any warranties in accordance with the terms of Section 6.1 of this Lease.

1.7 **Demolition of Existing Improvements**. The LESSEE acknowledges that the existing improvements have been demolished and consents and approves of the demolition of the existing improvements leased to LESSEE under the prior lease. In addition, LESSEE consents to construction of the Qualified Project and ISHOF Improvements on the Leased Premises (as defined in the 2018 Lease by and between the LESSOR and LESSEE). Construction of the East and West Building within the Qualified Project is a benefit to the LESSEE and adequate consideration for its consent.

ARTICLE 2 - USE OF PREMISES

2.1 **Permissible Uses**. LESSEE shall use the Leased Premises to operate the Leased Premises in compliance and as permitted under the Agreements, the site plan approved by the City and in accordance with the uses permitted under the City's Unified Land Development Regulations and the Leased Premises shall be open and available to the general public. Any other uses shall require the written consent of LESSOR, in its sole discretion. No operations, activities or uses shall violate or create a default under the Agreements. The Lessee shall operate the Leased Premises in cooperation and coordination with the LESSOR's parks and recreation department and in accordance with the Agreements and shall maintain the Leased Premises in a first-class condition consistent with the prestige and purpose of operating and managing the Qualified Project.

2.1.1 **Sub-Subleases**. Any and all sub-subleases, licenses, concessions or agreements granting other party with the right to occupy of use all or a portion of the Leased Premises (the "Subordinate Party") shall be subject to the terms and conditions of the Agreements and will require preapprovals from the LESSOR and the HOFP and all other parties designated in the Agreements. Prior to entering into an agreement with a Subordinate Party, LESSEE shall present such agreement to the City Manager for approval which agreements shall reflect market rate rents, terms and conditions as determined by the City Manager and in accordance with the Agreements. The sub-sublease, license and/or concession shall include, among other terms and conditions, indemnity and insurance in favor of LESSOR, as approved by LESSOR in its sole discretion. The term of the sub-sublease, license or concession shall not exceed the term of this Lease. Each sub-sublease, license and/or concession shall incorporate the terms and conditions of this Lease and the Agreements. In its sole discretion, LESSOR shall have the right to be named as a third-party beneficiary under each sub-sublease, license, concession or other agreement granting a third party rights to use or occupy the Leased Premises or to require the Subordinate Party to enter into a recognition agreement with the City. LESSEE shall not refuse to enter into a sub-sublease, license or concession agreement that has been approved by the LESSOR and HOFP. Such refusal of an approved sub-

sublease, license or concession shall be deemed an event of default under this Lease.

2.2 **Compliance with Regulations of Public Bodies**. LESSEE covenants and agrees that it shall, at its own cost and expense, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the applicable requirements relating to sanitation, fire hazard, zoning, historic designation regulations, environmental requirements (subject to Article 5 below) and other similar requirements designed to protect the public, worker and environments. LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

2.3 **Improvements**. After turnover of the Leased Premises to LESSOR as contemplated in the Agreements, LESSOR shall transfer a portion of the Qualified Projectto LESSEE. Thereafter, LESSEE shall not construct any permanent improvements upon the Leased Premises without the City Manager's express written consent as set forth in this section of the Lease and without the approval of the parties designated in the Agreements. LESSEE shall not construct any subsequent improvements, nor perform any material alteration, modification or demolition of any improvements upon the Leased Premises without first securing from the City Manager and HOFP, or its authorized agent, written approval indicating that the proposed construction, alteration, modification or demolition is acceptable, which approval shall not unreasonably withheld, delayed or conditioned. As a condition of acceptance, the City may impose reasonable conditions on LESSEE. Notwithstanding the foregoing LESSEE may make interior alterations that are not structural without the City's prior approval, so long as LESSEE obtains the required permit(s) from the City, in accordance with applicable codes and ordinances. ***Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises either by HOFP or under the direction of HOFP or LESSEE shall become the property of the LESSOR.*** Nothing herein shall be construed as a waiver of the LESSOR's police or regulatory policy in issuing development approvals. Approvals by the LESSOR pursuant to this Lease shall be considered approvals in its proprietary capacity and not under its police or regulatory power.

2.4 **Liability for Personal Property**. All personal property placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries or damage to LESSEE or any of LESSEE's sub- subtenants, licensees, concessionaires, agents, servants, employees, contractors, patrons, guests or invitees or to trespassers on the Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person.

2.5 **ADA Compliance**. LESSEE shall have the continuing obligation of compliance at its sole cost and expense with the Americans With Disabilities Act, as the same may be amended from time to time, with respect to the Leased Premises.

ARTICLE 3 - TERM OF LEASE

3.1 **Term**. The term of this Lease commences on the Rent Commencement Date (hereinafter defined) and runs for a period of thirty (30) years thereafter (the "Term") unless this

Lease is terminated prior to the expiration date pursuant to this Lease.

3.2 **Dates**.

3.1.1 **Effective Date**. The effective date of this Lease shall be the date that the last Party executes this Lease. Notwithstanding execution of this Lease by both parties, this Lease shall become valid and enforceable upon the approval by the City Manager of a written sub-sublease by and between ISHOF Peninsula LLC and an owner and/or operator of an aquarium, on terms and conditions, including without 'limitation, market rate rents and other commercially reasonable terms, acceptable to the City Manager in his sole discretion.

3.1.2 **Rent Commencement Date**. The Rent Commencement Date of this Lease is the earlier date the Lessee takes possession of the Leased Premises or the date that LESSOR notifies LESSOR that the Leased Premises are legally available for occupancy.

3.3 **Recordation of Memorandum of Lease**. A Memorandum of Lease, to be executed by both Parties contemporaneous with the Rent Commencement Date, shall be recorded by LESSEE, at LESSEE's expense, in the Public Records of Broward County, Florida.

3.4 **Representations and Warranties**. All steps, acts and conditions required by the organizational and other documents creating and binding on the LESSEE to be done as a condition precedent to the execution of this Lease have been done, and the LESSEE has full authority to enter into this Lease and the individual signing on behalf of LESSEE has been delegated the authority to enter into a binding agreement on behalf of the LESSEE.

3.5 **Agreement to Cooperate.** Both parties acknowledge that the terms of the Comprehensive Agreement contemplates construction of the East and West Buildings and other improvements within the Qualified Project (as defined in the Comprehensive Agreement). LESSEE will cooperate with LESSOR and the principals of HOFP, its affiliates, agents and other parties with respect to entering into sub-sub lease, license or concession arrangements. The prospective tenants, rental rates and other material terms and conditions of the sub-sublease, license and/or concession are determined and selected by HOFP and its affiliates. Further, as to completion of the improvements, naming rights, except for naming rights related to the museum and welcome center, tenant allowance, if any, ingress and egress to the building, parking needs, access to valet, if any, signage for the Museum and Welcome Center and other matters related to occupancy, operation, promotion, marketing management, maintenance and use of the Leased Premises, LESSEE and LESSOR agree to come to terms on such matters, in consultation with HOFP and its affiliates and agents on or before the Rent Commencement Date and amend this Agreement at that time to memorialize the consents and agreement of the parties. In the event the East or West Buildings or both are not constructed, regardless of the reason, then LESSOR is and shall be released from any and all liability, duties, responsibilities or obligations to LESSEE and this Lease and any prior agreements shall be deemed terminated and of no further force or effect, except those matters of LESSEE which survive termination. It is anticipated that the Leased Premises shall be complete within five (5) years after the Commencement Date (as defined in the Comprehensive Agreement), subject to Force Majeure. Further, LESSEE acknowledges and agrees to comply with the Agreements including without limitation execution of the Subordination, Non-Disturbance and Attornment Agreement as set forth in Exhibit D of the Master Facilities Lease.

3.6 **Rent on Net Return Basis**. It is intended that the rent provided for in this Lease shall be a net return to LESSOR as provided herein, free of any expenses or charges with respect to the Leased Premises, including, without limitation, maintenance, security services, structural and non-structural repairs, replacement, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate this intention.

3.7 **Audit Rights**. The LESSOR shall have the right at all reasonable times to inspect the books and records of the LESSEE pertaining to the performance by it of its obligations under this Agreement. LESSOR shall have the right to audit the books, records, and accounts of LESSEE that are related to this Agreement. LESSEE shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of LESSEE shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, LESSEE shall make same available at no cost to LESSOR in written form. LESSEE shall preserve and make available, at reasonable times for examination and audit by LESSOR in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit, litigation or other action has been initiated and has not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings, litigation or other action. If the Florida public records law is determined by LESSOR to be applicable, LESSEE shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be deemed an event of default under this Agreement.

3.8 **Termination of Sub-Lease.** The LESSOR reserves the right to terminate this Lease prior to the Rent Commencement Date in the event all or a portion of the improvements of the Qualified Project (as defined in the CA) or ISHOF Improvements (as defined in the CA) are not completed as evidenced by a certificate of occupancy or other appropriate governmental approval or in the event all or a portion of the ISHOF Improvements are not completed. LESSOR shall provide written notice of the termination to LESSEE and such termination of this Lease shall become effective upon the date specified in the notice. Thereafter, both parties shall be relieved released of any further liability under this Agreement except for those matters which survive termination. Alternatively, subject to compliance with the LESSOR's charter, the parties may agree to negotiate a new mutually acceptable lease. Such agreement to cooperate does not create an implied agreement or obligation of LESSOR to construct any improvements or to fund any improvements, it being the intent that LESSEE shall take possession of the Leased Premises in its then current condition and LESSEE waives any right to raise any claims for damages arising from the demolition of any buildings or improvements on the Leased Premises or any failure to construct the Qualified Project or ISHOF Improvements.

ARTICLE 4 - RENT AND ADDITIONAL PAYMENTS

4.1 **Amount and Payment of Rent**. As rent for the Leased Premises, LESSEE shall pay to LESSOR the monthly rent as agreed upon by the parties prior to the Rent Commencement Date commencing with the Rent Commencement Date and continuing each and every successive month thereafter through the balance of the Term (the "Rent"). Rent shall be payable at the election of the LESSOR by wire, ACH draft or other electronic transfer method set forth in the Master Facilities

Lease. It is anticipated that the rent will increase as each phase of the Qualified Project is completed. If LESSEE fails to pay its rent on the due date, then LESSEE shall pay any and all related late charges or penalties paid by LESSOR under the Master Facilities Lease.

4.1.1. **Rent**. Subject to the revenue sharing arrangement in the Agreements, Lessee shall be obligated to pay monthly rent starting on the Rent Commencement Date and on each and every successive calendar month thereafter and during and throughout the Term of this Lease as follows:

4.1.1.1 Leased Based Revenue (as defined in the CA); and

4.1.1.2 Non-Leased Based Revenue (as defined in the CA) less the Excluded Revenue as defined in the CA and in Section 4.1.2 of this Lease; and

4.1.1.3 Prior to the Rent Commencement Date, the parties shall amend this Lease to establish the amount of the Leased Based Revenue, Non-Leased Based Revenue, and all other rents owed under the Comprehensive Agreement by LESSEE to LESSOR (collectively, the "Rent"). Further, all Rent shall be subject to an annual year-over-year increase of three percent (3%).

The obligation of LESSEE to make payments of Rent and Additional Rent on the dates due is absolute and unconditional and is not subject to any set-off, credit, adjustment, abatement, defense, counterclaim or recoupment for any reason.

4.1.2 **Excluded Revenue.** Both parties acknowledge that the following revenue referred to as the ISHOF Excluded Revenue in the CA is excluded from rent owed to LESSOR:

1. LESSEE'S museum ticket and shop sales.

2. Revenues generated by the VIP suites located within LESSEE leased space.

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

4. Facility Sponsorships during Events and Shows in the Aquatic Center Improvements held by LESSEE, subject to the superior rights of HOFP and Facilities Manager to the Aquatic Center Improvements (as more particularly described in Section 3.08(f) of the Comprehensive Agreement). For purposes hereof, it is understood and agreed that Facility sponsorships shall include fundraising events which are held by LESSEE from time to time.

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

6. Subject to the rights of HOFP, naming Rights within the respective LESSEE leased space areas in the East or West Buildings.

7. Flow Rider revenues, if LESSEE elects to sub-sublease the Flow Rider from LESSOR.

8. Grants or donations which support the public mission of LESSEE.

4.2 **Sales Tax, Fees, Special Assessments, etc**. Beginning on the Rent Commencement Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the real property or improvements constructed thereon shall be made and paid by LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term. Should any such tax rate change under the Florida sales tax statute or other applicable statutes, LESSEE shall pay LESSOR the amounts reflective of such changes.

4.3 **Additional Rent Payments**. Exclusive of Rent due under Section 4.1 and all sums due under Section 4.2 hereof, all other payments that LESSEE is obligated to make under this Lease shall be considered "Additional Rent" regardless of whether the payments are so designated. All Additional Rent payments are due and payable within thirty (30) days after rendition of a statement, therefore.

4.4 **Utility or Service Charges**. Beginning on the Rent Commencement Date, LESSEE agrees to pay all utility service charges including, but not limited to gas, electricity, telephone, telecommunications, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Leased Premises. If any of these charges remain unpaid after they become due, LESSOR may exercise its remedies as set forth in Article 11. LESSOR shall not be liable to LESSEE for damage nor otherwise because of LESSEE's failure to arrange for or to obtain any utilities or services referenced above for the Leased Premises that are supplied by parties. No such failure, interruption or curtailment may constitute a constructive or partial eviction.

4.5 **Governmental Charges or Services**. Beginning on the Rent Commencement Date and subject to the provisions of Section 4.7, LESSEE must pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Leased Premises or personalty situated thereon or operations conducted thereon that arise during the term of the Lease. Nothing shall preclude LESSEE from seeking an exemption from ad valorem and other taxes due to its Parent Company's status as a tax-exempt organization under Internal Revenue Code Section 501c (3). LESSEE shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

4.5.1 All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees.

4.5.2 All such charges, whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Leased Premise or use thereof or improvements thereto or personalty situated thereon.

4.5.3 All such charges that arise from, become payable from or with respect

to, or become a lien on any of the following:

(a) All or any part of the Leased Premises or use thereof or improvements thereto or personalty situated thereon.

(b) Any appurtenance to the Leased Premises.

(c) The rent and income received by the LESSEE from any sub subtenant, licensee concessionaire or any other party with the right to occupy or use all or a portion of the Leased Premises.

(d) Any use or occupation of the Leased Premises.

(e) Any document to which the LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises.

(f) Sales or use tax arising from LESSEE's operations; or

(g) Any taxes or charges applicable to the Rent or Additional Rent paid under this Lease.

4.6 **Payments and Receipts**. Upon LESSOR's written request, LESSEE shall deliver to LESSOR official receipts that show payment of all charges required under this Article and contained in LESSOR's written request. These receipts must be delivered to the place where the Rent payments are to be made. The LESSEE shall pay every tax or other charge required to be made under this Article before the charge or tax becomes delinquent under the law then governing payment of the tax or other charge, unless the tax or charge is challenged by LESSEE in accordance with Section 4.7 of this Lease.

4.7 **LESSEE'S Challenge of Tax**. So long as LESSOR is not in default under the Agreements, LESSEE may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for nonpayment of taxes under this Lease, provided LESSEE complies with terms and conditions of this Section and the Agreements. LESSEE must give LESSOR and all parties designated under the Agreements written notice of LESSEE's intention to contest and LESSEE must also furnish LESSOR with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by LESSOR. The bond or cash must be in an amount equal to the 125% of the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. LESSEE must give written notice accompanied by evidence of the bond or escrow to LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

4.8 **LESSOR'S Remedy for LESSEE'S Nonpayment**. If LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 4.7 of this Lease, the LESSOR may pay them. On LESSOR's demand, LESSEE shall reimburse LESSOR all amounts LESSOR has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of six (6%) per cent per annum from the date LESSOR paid such outstanding taxes, fees, assessments or other governmental charges, up to but not exceeding the maximum rate of interest allowable under Florida law. On the day LESSOR demands repayment or reimbursement from LESSEE, LESSOR is entitled to collect or enforce these payments in the same manner as a payment of Rent. The LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive LESSEE's default.

ARTICLE 5 - HAZARDOUS SUBSTANCES

5.1 **Definitions.** F or the purpose of administering this Article, the following terms shall have the meaning as set forth below:

(a) "**Environmental Agency**" means a governmental agency at any level of government having jurisdiction over Hazardous Substances and Hazardous Substances Laws and 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.

(b) "**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 under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radon, (v) any substance designated as a "hazardous substance" pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et seq. or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as "hazardous waste" pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq., (vii) defined as a "hazardous substance pursuant to Sec. 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or (viii) designated as a "hazardous substance" as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

(c) "**Hazardous Substances Laws**" means all local, state and federal laws, ordinances, statutes, rules, regulation and orders as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection and/or regulation, or the use, analysis, generation, manufacture, storage, disposal or transportation of Hazardous Substances.

(d) "**Petroleum Products**" as defined by Florida Administrative Code Sec. 62-761.200 are any liquid fuel commodities made from petroleum including, but not limited to, diesel fuel, kerosene, gasoline, and fuels that contain mixtures of gasoline and other products.

(e) "**Products**" is defined in Sec. 377.19 (11), Florida Statutes, as same may be amended from time to time, as any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, untracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, used oil, kerosene, benzene, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(f) The term "property damage" as used in this Article includes, but is not limited to, damage to the property of the LESSEE, LESSOR and/or of any third parties caused by or resulting from LESSEE's breach of any of the covenants in this Article and shall include remedial activities performed by an Environmental Agency or by LESSEE pursuant to directives from an Environmental Agency.

5.2 **LESSOR'S Consent Required**. Beginning on the Rent Commencement Date and continuing throughout the Term, no Hazardous Substances shall be brought upon or kept or used in or about the Leased Premises by any person whomsoever, unless LESSEE first obtains written consent from the City Manager and the necessary parties designated in the Agreements (except de minimis quantities of Hazardous Substances used in the ordinary course of LESSEE's business and in accordance with applicable Hazardous Substance Laws).

5.3 **Compliance with Hazardous Substances Laws**. Beginning on the Rent Commencement Date and continuing throughout the Term and with respect to Hazardous Substances brought onto the Leased Premises by any person whomsoever other than LESSOR, its agents, employees, contractors or licensees acting within the course and scope of their duties, LESSEE shall have the absolute responsibility to ensure that the Leased Premises are used at all times and all operations or activities conducted thereupon are in compliance with all Hazardous Substances Laws and all permits, licenses and other Environmental Agency approvals required for any such activity conducted upon the Leased Premises.

5.4 **Hazardous Substances Handling**.

5.4.1 LESSEE covenants that beginning on the Rent Commencement Date and continuing throughout the Term hereof, any Hazardous Substance brought upon the Leased Premises by any person whomsoever, shall be handled, treated, dealt with and managed in conformity with all applicable Hazardous Substances Laws and prudent industry practices regarding management of such Hazardous Substances. LESSEE covenants that any and all Hazardous Substances removed from the Leased Premises shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Substances and wastes and only in accordance with Hazardous Substances Laws and consistent with all conditions of any and all permits, licenses and other Environmental Agency approvals required for such removal and transportation.

5.4.2 Upon expiration of the Term or earlier termination of this Lease, LESSEE shall cause all Hazardous Substances which are brought upon the Leased Premises subsequent to the Rent Commencement Date by any person whomsoever, to be removed from the Leased Premises and to be transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Substances Laws; provided, however, that LESSEE shall not take any remedial action in response to the presence of Hazardous Substances in or about the Leased Premises, nor enter any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances Laws in any way connected with the Leased Premises, without first notifying LESSOR and other parties required to receive notices in the Agreements of LESSEE's intention to do so and affording LESSOR reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR' s interest with respect thereto.

5.5 **Notices**.

5.5.1 If at any time LESSEE shall become aware or have reasonable cause to believe that any Hazardous Substance has come to be located on or beneath the Leased Premises (except de minimis quantities of Hazardous Substances used in the ordinary course of

LESSEE's business and in accordance with applicable Hazardous Substance Laws), LESSEE shall promptly upon discovering such presence or suspected presence of the Hazardous Substance give written notice of that condition to LESSOR, as provided herein and any other party required to receive notice under the Agreements.

5.5.2 In addition, LESSEE shall promptly notify LESSOR and other parties required to receive notice under the Agreements in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Substances Law, (ii) any written claim made or threatened by any person against LESSEE, the Leased 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 Leased Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith.

5.5.3 LESSEE shall also supply to LESSOR as promptly as possible, and, in any event, within five (5) days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Leased Premises or improvements located thereon or LESSEE's use thereof.

5.6 **Environmental Liabilities**. Any Hazardous Substances discovered on, under or within the Leased Premises that are in violation of the Hazardous Substances Laws, shall be the absolute responsibility of the LESSEE and LESSEE shall indemnify LESSOR pursuant to Section 5.7 and LESSEE shall be the "Indemnitor" and LESSOR shall be the "Indemnitee" as the terms are defined therein.

5.7 **Hazardous Substances Indemnification**.

5.7.1 Except for matters reflected in the Environmental Report (as defined in the Comprehensive Agreement), Indemnitor agrees to and shall indemnify, defend and hold Indemnitee harmless of and from any and all claims, demands, fines, penalties, causes of action, administrative proceedings liabilities, damages, losses, costs and expenses, which are asserted against the Indemnitee 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:

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

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

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

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

(e) the disposal of Hazardous Substances, or

(f) some or all of the foregoing.

5.7.2 Indemnitor shall further indemnify, defend and hold Indemnitee harmless from and against any and all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises during the Term, including, without limitation the following when required by Hazardous Substances Laws or by governmental entities and agencies that enforce Hazardous Substances Laws (herein "Environmental Agencies"):

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

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

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

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

5.7.3 Indemnitor further agrees that its indemnification obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of any agent, licensee, subtenant, sub subtenant, vendor, employee or volunteer, invitee, guest of Indemnitor, regardless of whether Indemnitor has paid the employee under the Workers' Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

5.7.4 Indemnitor agrees that the foregoing obligations to indemnify, defend and hold Indemnitee harmless, effective pursuant to this section, extends to and includes all reasonable attorneys' fees, experts' fees and costs incurred in the defense of any of the foregoing claims or demands as well as enforcement of the provisions of this Article respecting Hazardous Substances. The indemnification provided in this Lease is effective on the Rent Commencement Date and shall survive the termination of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitation for such claim or cause of action.

5.7.5 Indemnitee reserves the right to select counsel of its own choosing, subject to Indemnitor approval, which shall not be unreasonably, withheld, conditioned or delayed, in the event Indemnitor is called upon to defend Indemnitee pursuant to this indemnity.

5.8 **Environmental Testing**.

5.8.1 Beginning after the Rent Commencement Date and continuing throughout the Term, LESSOR, HOFP, Facilities Manager, or their agents, may, upon reasonable prior written notice to LESSEE (taking into account the potential disruption of the LESSEE's operation) enter upon the Leased Premises for the purpose of conducting environmental tests ("LESSOR'S Tests") to determine the presence and/or extent of contamination by Hazardous Substances in, on, under, above, within or about the Leased Premises. LESSOR shall not be entitled to conduct the LESSOR'S Tests unless:

(a) An Environmental Agency shall have issued a notice of violation with respect to the Hazardous Substances on, within, above, about or under the Leased Premises; or

(b) LESSOR has probable cause to believe that LESSEE has violated Hazardous Substance Laws relating to the LESSEE's use of the Leased Premises.

5.8.2 **LESSOR'S Tests shall be at the sole cost and expense of LESSEE.** The cost and expenses of LESSOR'S Tests shall not be included in the scope of any indemnification set forth in this Article, unless the LESSOR's Tests reveal the presence of Hazardous Substances at levels that are in violation of the Hazardous Substances Laws. No LESSOR'S Tests shall be conducted until LESSOR has provided to LESSEE the name of the environmental engineering firm licensed to perform such work in the State of Florida (the "Permitted Firm").

5.9 **Environmental Procedure; Consent to Assignment**.

5.9.1 Any provisions herein to the contrary notwithstanding, LESSEE shall, at its own cost and expense, furnish to LESSOR a Phase I Environmental Assessment and/or Phase II Environmental Assessment of the Leased Premises, by a Permitted Firm. The foregoing is referred to hereinafter as the "Environmental Procedure."

5.9.2 The Environmental Procedure shall include a qualitative and quantitative analysis of the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises.

5.9.3 If the Environmental Procedure establishes the presence of Hazardous Substances at levels that are in violation of the Hazardous Substance Laws, then LESSOR may withhold consent to the assignment of the leasehold interest or any part thereof, sub-sublease, license or concession, until security is posted with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

ARTICLE 6 - CONDITION OF PREMISES

6.1 **LESSEE'S Acceptance and Maintenance of Leased Premises.**

6.1.1 **"AS IS" Condition**. LESSEE acknowledges that prior to the Rent Commencement Date hereof it has performed sufficient inspections of the Leased Premises in order to fully assess and make itself aware of the condition of the Leased Premises and all improvements thereon, and that LESSEE is leasing the Leased Premises in its "AS IS" condition. LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Premises, or the workmanship of the construction of the Qualified Project or ISHOF Improvements and that LESSEE is not relying on any representations or warranties of the LESSOR or any broker(s) or agent of LESSOR in leasing the Leased Premises. LESSEE acknowledges that neither LESSOR nor any agent or employee of LESSOR has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether

express or implied, oral or written, past, present or future, of, as to, concerning with respect to:

(a) The nature, quality or condition of the Leased Premises, including, without limitation, the water, soil and geology.

(b) The suitability of the Leased Premises for any and all activities and uses which LESSEE, its sub-subtenants, licensees or concessionaires, may conduct thereon.

(c) The compliance of or by the Leased Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body.

(d) The habitability, merchantability or fitness for a particular purpose of the Leased Premises.

(e) The workmanship or quality of construction of the Qualified Project.

(f) Any other matter with respect to the Leased Premises.

Without limiting the foregoing, LESSOR does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any Hazardous Substances, at, on, under or about the Leased Premises or the compliance or non-compliance of the Leased Premises with any laws, rules, regulations or orders regarding Hazardous Substances Laws. Hazardous Substances shall also include Radon Gas. LESSEE further acknowledges that neither LESSOR nor any agent of LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises. Accordingly, as between LESSOR and LESSEE under this Lease, the physical condition of the Leased Premises and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Leased Premises shall be the sole responsibility and obligation of LESSEE.

6.1.2 **Maintenance**. At its expense, LESSEE shall maintain the Leased Premises and any new improvements constructed by LESSEE in a good state of repair and in a condition consistent with the Permissible Uses set forth in Section 2.1 hereof. LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, fixtures and equipment that LESSEE brings, constructs or placed on the Leased Premises. LESSEE shall repair, replace and renovate the Leased Premises and all the improvements located thereon as often as is necessary to keep these items in a good state of repair. It is anticipated that LESSEE shall coordinate all maintenance activities with the Facilities Manager (as defined in the Comprehensive Agreement). With respect to the Leased Premises, it is the intent of LESSOR that LESSEE comply with the maintenance obligations under the Master Facilities Lease.

6.2 **Condition at End of Term.** At the earlier of the expiration of the Term or termination of this Lease, LESSEE and its sub-sublessees, licensees and/or concessionaires shall quit the Leased Premises and surrender it and all improvements, including all existing or to be constructed improvements thereon, including without limitation, all permanently affixed fixtures, to LESSOR, normal wear and tear excepted.

ARTICLE 7 - LIENS

7.1 **Liens against the Leased Premises**. LESSEE shall have no power or authority to

incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of LESSOR or HOFP in and to the Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LESSEE as to LESSOR's or HOFP right, title or interest in and to the Leased Premises. All persons contracting with the LESSEE or furnishing materials, labor or services to said LESSEE, or to its agents or servants, as well as all other persons shall be bound by this provision of this Lease and the Agreements. 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 or HOFP, so as to confer upon a laborer bestowing labor upon or within the Leased Premises or upon material men who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the LESSOR's or HOFP right, title or interest in and to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(2), Florida Statutes of the "non-liability" of the LESSOR or HOFP.

ARTICLE 8 - ENTRY AND INSPECTION OF PREMISES

8.1 **LESSOR'S Inspection and Entry Rights**. LESSOR, or any agent thereof, HOFP, Facilities Manager, upon reasonable notice, shall be entitled to enter the Leased Premises during any reasonable business hours for any of the following reasons:

8.1.1 To examine the Leased Premises; or

8.1.2 To make all repairs, addition(s) or alteration(s) that LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof needs maintenance or repair and LESSEE fails to take appropriate curative actions; or

8.1.3 To remove signs, fixtures, alterations or additions that do not conform to the terms of this Lease or the Agreements after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof is not in compliance with the terms of this Lease and LESSEE has failed to take appropriate curative actions. Provided that nothing herein shall be construed in such a manner as to impose upon LESSOR the obligation to so enter the Leased Premises and perform any act referenced above.

8.2 **Annual Inspections**. Notwithstanding the foregoing, LESSOR may conduct annual inspections of the Leased Premises at LESSOR'S sole cost and expense, upon three (3) days prior written notice to LESSEE. Said inspection shall take place during normal business hours at a reasonable time mutually agreed to between the parties.

8.3 **Liability for Entry**. LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under LESSEE, or any invitees thereof shall have any claim or cause of action against LESSOR because of LESSOR's entry or other action taken under this Article, except to the extent that any such claim or cause of action is due to the intentional or grossly negligent conduct of LESSOR, its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

ARTICLE 9 - INSURANCE AND INDEMNIFICATION

9.1 **Indemnity**.

9.1.1 LESSEE shall protect, defend, indemnify and hold harmless the LESSOR, its public officials, officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LESSEE under this Lease and the Agreements, conditions contained therein, the location, construction, repair, maintenance, use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by LESSEE of any covenant or provision of this Lease or the Agreements, any acts or omissions of LESSEE which causes an event of default by LESSOR under the Agreements except for any occurrence arising out of or resulting from LESSOR's breach of this Lease or the gross negligence or intentional acts of the LESSOR, its officers, agents and employees acting within the course and scope of their employment. This indemnity shall survive termination of this Lease and is not limited by insurance coverage.

9.1.2 Without limiting the foregoing any and all such claims, suits, causes of action relating to personal injury, death, damage to property or defects in construction completed by Lessee or its sub-subtenants or assignees, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of the City's Charter or any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, except for any occurrence arising out of or resulting from LESSOR'S breach of this Lease, or gross negligence or intentional acts of LESSOR, or its officers, agents and employees acting within the course and scope of their employment ("Claims"), is included in the indemnity.

9.1.3 LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such Claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the LESSOR, LESSEE shall assume and defend not only itself but also the LESSOR in connection with any such Claims and any such defense shall be at no cost or expense whatsoever to LESSOR, provided that LESSOR, exercisable by LESSOR's City Manager or Risk Manager (the "Risk Manager") shall retain the right to select counsel of its own choosing, subject to the LESSEE'S approval which shall not be unreasonably withheld, conditioned or delayed.

9.2 **LESSOR'S Liability**. In no event shall LESSOR's liability for any breach of this Lease exceed the actual damages incurred by LESSEE as a direct and proximate result of that breach. Actual damages shall not include LESSEE's office or administrative overhead, loss of efficiency, consequential, indirect, special, exemplary or punitive damages. Further, LESSOR shall not be liable, either vicariously or directly, in the event HOFP, its agents, lenders, contractors, or employees or the Facilities Manager, its agents, lenders, contractors or employees violate any term, provision or condition under this Lease, it being the intent that LESSEE shall seek remedy directly against either HOFP or the Facilities Manager. In particular, LESSOR shall have no liability to LESSEE in the event HOFP or its agents in the exercise of its rights under the Comprehensive Agreement names a portion of the Leased Premises or permits a use of the Leased Premises that is

in bad taste, offensive or an embarrassment to the image of LESSEE or its Parent Company. This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. Furthermore, no property, whether real or personal, including the Leased Premises or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and LESSOR shall not be liable for any deficiency.

9.3 **Insurance.** During the term of this Lease and during any renewal or extension term of this Agreement, the LESSEE, at the LESSEE's sole expense, shall provide insurance of such types and with such terms and limits as noted below. These insurance provisions and the insurance requirements of the Agreements shall be incorporated in all sub-subleases, licenses and concession agreements. Providing proof of and maintaining adequate insurance coverage are material obligations of LESSEE. LESSEE shall provide LESSOR with a Certificate of Insurance evidencing such coverage. LESSEE's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Lessee shall not be interpreted as limiting LESSEE's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by LESSOR's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of LESSOR, and these coverages, limits, and endorsements may not be relied upon by LESSEE for assessing the extent or determining appropriate types and limits of coverage to protect LESSEE against any loss exposure, whether as a result of this Lease or otherwise. The requirements contained herein, as well as LESSOR's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease.

The following insurance policies and coverages are required:

Property Coverage and Business Interruption Insurance.
Coverage must be afforded in an amount not less than 100% of the current value of the Leased Premises after the improvements are complete, net of the value of the underlying land, with a deductible of no more than $25,000 for each claim. Coverage form shall include, but not be limited to:

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

The deductibles set forth above notwithstanding, the following deductibles are approved by the Lessor:

- a maximum deductible of $50,000 for Earth Movement; and
- a maximum deductible of 5% of the Replacement Cost of the property for Named Windstorm.

This policy shall insure the interests of the Lessor and Lessee in the Leased Premises against all risk of physical loss and damage, and name the Lessor as a loss payee, to extent of the value of the premises after the Improvements are complete.

LESSEE will maintain business interruption insurance in an amount sufficient to cover not less

than twenty-four (24) months of rent owed hereunder.

All rights of subrogation shall be waived against LESSOR under the property coverage policy.

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

9.3.1 **Collection of Insurance**. In the event of destruction of or damage to any of the Leased Premises or the buildings, other structures and improvements covered by insurance, the funds payable pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by LESSOR, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances, rules, regulations, ordinances and charter of LESSOR. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such an event, such funds shall be used as far as the same will permit in paying the cost of the reconstruction or repair. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to LESSOR.

9.3.2 **Commercial General Liability**

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

- $ 1 MILLION each occurrence and $ 2 MILLION aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury

Policy must include coverage for Contractual Liability and Independent Contractors.

9.3.3 LESSOR and LESSOR'S officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to LESSOR or LESSOR'S officers, employees, and volunteers.

9.4 **Business Automobile Liability**

9.4.1 Coverage must be afforded for owned, hired, scheduled and non-owned vehicles for bodily injury and property damage in an amount not less than $1,000,000 combined single limit for each accident.

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

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

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

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

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

9.6 **Insurance Certificate Requirements**

a. LESSEE shall provide LESSOR with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Lease.
b. LESSEE shall provide to LESSOR a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of LESSEE to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
d. In the event the Lease term goes beyond the expiration date of the insurance policy, LESSEE shall provide LESSOR with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. LESSOR reserves the right to suspend the Lease until this requirement is met.
e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract date or prior date.
f. LESSOR shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
g. LESSOR shall be granted a Waiver of Subrogation on LESSEE's Workers' Compensation insurance policy.
h. The title of this Lease, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
101 NW 3rd Avenue
Fort Lauderdale, FL 33301
Attn: Risk Manager

9.6.1 LESSEE has the sole responsibility for the payment of all insurance premiums

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

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

9.6.3 LESSEE's insurance coverage shall be primary insurance as applied to LESSOR and LESSOR's officers, employees, and volunteers. Any insurance or self-insurance maintained by LESSOR covering LESSOR, LESSOR's officers, employees, or volunteers shall be non-contributory.

9.6.4 Any exclusion or provision in the insurance maintained by LESSEE that excludes coverage for work contemplated in this Lease shall be unacceptable and shall be considered breach of contract.

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

9.6.6 LESSEE shall provide notice of any and all claims, accidents, and any other occurrences associated with this Lease to LESSEE's insurance company or companies and LESSOR's Risk Management office, as soon as practical.

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

9.6.8 Prior to commencement of construction activities, LESSEE (or any subtenant, sublessee or other party in possession of all or a portion of the Premises) shall provide evidence of, "All Risk" Completed Value Form, Builder's Risk insurance coverage ("Builder's Risk coverage"). The Builder's Risk coverage shall remain in force at least until substantial completion of the improvements by LESSEE, as evidenced by a final Certificate of Occupancy or Completion, at which time LESSEE shall procure property insurance so that there is continuous coverage in force and effect with no lapse in protection. Upon expiration or termination of the Builder's Risk coverage, LESSEE shall provide evidence of property insurance together with fire and extended coverage for the full value of the improvements including coverage for wind. Coverage shall be effective no later than the date of expiration of the builder's risk policy and shall remain in force thereafter throughout the Term of this Lease.

(a) Prior to the commencement of construction LESSEE shall require LESSEE's contractors and any subcontractors to provide the minimum insurance designated in this Lease and to include LESSOR as an additional insured on any general liability and excess liability policies.

(b) If the Leased Premises is located in a federally designated flood plain, a flood insurance policy acceptable to LESSOR shall also be delivered to LESSOR, providing coverage in the entirety of the Term for the maximum amount reasonably necessary to insure against the risk of loss from damage to the Leased Premises and improvements located thereon caused by a flood.

(c) LESSEE agrees to cooperate with LESSOR in obtaining the benefits of any insurance or other proceeds lawfully or equitably payable to LESSOR in connection with this Lease.

(d) LESSOR's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements from time-to-time, including, but not limited to, deductibles, limits, coverages, and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or any changes in the improvements, including changes in the scope of work or specifications affecting the applicability of coverage.

9.7 **Performance and Payment Bond**: To the extent LESSEE seeks to construct improvements and to the extent required by LESSOR, at its election, LESSEE shall obtain from its general contractor a Performance Bond and a separate Payment Bond in favor of LESSOR and LESSEE and other parties designed by LESSOR, in accordance with the requirements of this Section.

9.7.1 The Performance Bond and Payment Bond shall be in the amount of One Hundred percent (100%) of the price of the construction contract for any proposed improvements, guaranteeing the parties the agreed upon performance and completion of the work covered in such contract, as well as full and complete payment of all suppliers, material persons, laborers, or subcontractors employed by the general contractor to perform work with respect to the proposed improvements. The Performance Bond and Payment Bond shall be executed by a surety company satisfying the requirements of this section.

9.7.2 The Performance Bond and Payment Bond shall remain in force for one (1) year after final completion of the construction work, with liability equal to One Hundred Percent (100%) of the construction contract price. LESSEE or any sub subtenant, licensee or concessionaire as applicable, shall require and ensure that its general contractor maintain the Performance Bond and Payment Bond throughout the course of the construction phase of the work, and for one (1) year following the final completion and acceptance by LESSOR of the construction work for the proposed improvements.

9.7.3 The Performance Bond and Payment Bond must be executed by a surety company of recognized standing that is authorized to do business in the State as a surety, has

a resident agent in the State, and has been in business with a record of successful continuous operation for at least five (5) years. The surety company shall hold a current Certificate of Authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the required bonding amount exceeds the underwriting limitation set forth in such circular, in order to qualify as a satisfactory surety, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised (31 CFR Section 223.10, Section 223.11). Further, the surety company shall provide the parties with evidence satisfactory to each party, that such excess risk has been protected in an acceptable manner.

9.7.4 The Performance Bond and Payment Bond shall be unconditional, must contain dual obligee riders in favor of LESSOR and LESSEE, and comply with the provisions of Section 713.23 or Section 255.05, Florida Statutes.

9.7.5 LESSEE, at LESSEE's sole cost, shall record the executed Payment and Performance Bond as an exhibit to the Notice of Commencement in the official public records of Broward County, Florida. LESSEE shall provide LESSOR with a copy of the recorded Notice of Commencement prior to commencement of construction.

9.7.6 To the extent the insurance requirements under this Lease conflicts with the insurance requirements of the Master Facilities Lease, at LESSOR's election, LESSOR may elect to impose the insurance requirements of the Master Facilities Lease and thereafter, LESSEE shall comply with the insurance requirements in the Master Facilities Lease.

ARTICLE 10 - ASSIGNMENTS

10.1 **Assignment.**

10.1.1 LESSEE shall not assign its leasehold interest nor sub-sublet, license or grant any concession for the use of the Leased Premises to another person or entity without obtaining the prior written consent of the City Commission of the City, in its reasonable discretion. If required by the Agreements, LESSEE shall obtain the consent of HOFP, and other parties designated in the Agreements. Any interest of a sub-subtenant, assignee, licensee, concessionaire or party in possession shall be subject to the terms and conditions of this Lease and the Agreements, such that the failure of the interested party to comply with and abide by the terms of this Lease and the Agreements shall be deemed a default under this Lease.

10.1.2 LESSEE shall, by written notice, advise LESSOR of its desire from and after a stated date (which shall not be less than sixty (60) days) to assign, sub-sublet, license or grant a concession to all or a portion of its interest under this Lease for any part of the Term hereof. LESSEE shall supply LESSOR and HOFP with such information, financial statements, verifications and related materials as LESSOR or HOFP may reasonably request or desire to evaluate the written request to such a transfer; and in such event LESSOR shall have the right, in its reasonable discretion, to be exercised by giving written notice to LESSEE within sixty (60) days after receipt of LESSEE's notice and all of the aforesaid materials to either refuse or consent to such a transfer. Said notice by LESSEE shall state the

name and address of the proposed party.

10.1.3 As a condition to LESSOR's prior written consent of the proposed transfer of interest, sub-sublease, license or concession, the proposed party shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease and the Agreements, and LESSEE shall deliver to LESSOR promptly after execution, an executed copy of such sub-sublease, assignment or license or concessionaire agreement and an agreement of said compliance by each sub-subtenant, assignee, licensee or other party in possession.

10.2 **Continued Liability of LESSEE**. LESSOR'S consent to any license, assignment, encumbrance, subletting, occupation, or other transfer shall not release LESSEE from any of LESSEE's obligations hereunder or be deemed to be a consent to any subsequent occurrence. Any license, assignment, encumbrance, subletting, occupation, or other transfer of this Lease that does not comply with the provisions of this Section or the Agreements shall be void.

10.3 **Sale of Business or Assets**. LESSEE hereby represents that as a Florida limited liability company, it has not issued or conveyed any interest in LESSEE to an individual or another entity except to the Parent Company. LESSEE agrees not to sell, assign, transfer, convey, pledge, hypothecate or alienate 1) its company to another party, 2) all or substantially all of its assets to another party or 3) its interests in any affiliate or subsidiary, without the written consent of the LESSOR, which consent may be granted or denied in its sole discretion. Violation of this condition shall be deemed an event of default and LESSOR shall have the right to terminate this Lease at its election.

ARTICLE 11 - LESSOR'S REMEDIES

11.1 **Events of Default**. The occurrence of any one or more of the following shall constitute an Event of Default by LESSEE under this Lease: (i) LESSEE's failure to pay any sum due hereunder within ten (10) days after the same shall become due; (ii) LESSEE's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease or the Agreements on LESSEE's part to be performed or observed if such failure continues for more than thirty (30) days after notice from City or such reasonable time to cure as mutually agreed to by both parties; (iii) LESSEE's vacating or abandoning the Premises; (iv) LESSEE's failure to materially comply with the terms of the Agreements; v) LESSEE's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding or (vi) LESSEE makes a misrepresentation or omission of a material fact. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, City shall have the right to pursue such remedies as may be available to City under the law, including, without limitation, the right to give LESSEE notice that City intends to terminate this Lease upon a specified date not less than ten (10) days after the date notice is received by LESSEE, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the ten (10) day period and the City is so notified, this Lease will continue.

11.2 **Accord and Satisfaction**. If LESSEE pays or LESSOR receives an amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or

statement on any check or letter may be deemed an accord and satisfaction. LESSOR may accept any check or payment without prejudice to LESSOR's right to recover the balance due or to pursue any other available remedy.

11.3 **Remedies in Event of Default**. If LESSEE abandons or vacates the Leased Premises before the end of the Term , if LESSEE is in arrears in Rent or Additional Rent, LESSEE commits an event of default under the Agreements or LESSEE commits an event of default under Section 11.1 referenced above and payments and applicable cure periods have expired, LESSOR may cancel or terminate this Lease, subject to the notice and opportunity to cure provisions set forth in the Section above and LESSEE's right, title and interest in the Leased Premises shall terminate as of the date set forth in the notice. In addition, LESSOR may partially or fully accelerate the Rent which would become due through the end of the Term and demand immediate payment in full. LESSOR may enforce the provisions of this Lease and protect the rights of LESSOR by a suit or suits in equity or at law for the performance of any covenant or agreement herein, or any other appropriate legal or equitable remedy, including without limitation, injunctive relief, recovery of all moneys due or to become due from LESSEE under any of the provisions of this Lease or the Agreements, specific performance and any other damages incurred by LESSOR arising from LESSOR's default under this Lease.

11.4 **Cancellation of Lease**. On cancellation or termination of this Lease, LESSOR shall be entitled to peaceably enter the Leased Premises as LESSEE's agent to regain or relet the Leased Premises. LESSOR shall incur no liability for such entry. As LESSEE's agent, LESSOR may relet the Leased Premises with or without any improvements, fixtures or personal property that may be upon it, and the reletting may be made at such price, in such terms and for such duration as LESSOR determines and for which LESSOR receives rent. LESSOR shall apply any rent received from reletting to the payment of the rent due under this Lease. If, after deducting the expenses of reletting the Leased Premises, LESSOR does not realize the full rental provided under this Lease, LESSEE shall pay any deficiency.

11.5 **Dispossession on Default; Notice and Opportunity to Cure**.

11.5.1 If LESSEE defaults in the performance of any covenant, term, or condition of this Lease or Agreements, LESSOR may give LESSEE written notice of that default, as provided in Section 12.2. If LESSEE fails to cure a default in payment of Rent or Additional Rent within ten (10) days after notice is given, LESSOR may terminate this Lease. For defaults other than nonpayment of Rent or Additional Rent, LESSEE shall cure such default within thirty (30) days after notice is given or within such greater period of time as specified in the notice.

11.5.2 If the default (other than for nonpayment of Rent or Additional Rent) is of such a nature that it cannot be reasonably cured within time specified, LESSOR may terminate this Lease only if LESSEE fails to proceed with reasonable diligence and in good faith to cure the default within thirty (30) days after written notice is given. Thereafter, termination of this Lease may occur only after LESSOR gives not less than ten (10) days' advance written notice to LESSEE and such default remains uncured. On the date specified in the notice, the Term will end, and LESSEE shall quit and surrender the Leased Premises to LESSOR, except that LESSEE will remain liable as provided under this Lease. If LESSEE has committed an event of default under the Agreements, then the notice and opportunity to

cure provisions under the Agreements shall control.

11.5.3 On termination of this Lease, LESSOR may peaceably reenter the Leased Premises without notice to dispossessed LESSEE, any legal representative of LESSEE or any other occupant of the Leased Premises. LESSOR may retain possession through summary proceedings or otherwise and LESSOR shall then hold the Leased Premises as if this Lease has not been made.

11.6 **Damages on Default**. If LESSOR retakes possession under Section 11.4, LESSOR shall have the following rights:

11.6.1 LESSOR shall be entitled to Rent or Additional Rent through the end of the term of the Lease will become due immediately, plus any expenses (including, but not limited to attorneys' fees, brokerage fees, advertising, administrative time, labor and materials related to removal of unfinished structures or reconstruction of existing facilities on the Leased Premises, etc.) that LESSOR incurs in returning the Leased Premises to good order and/or preparing it for re- letting, if LESSOR elects to re-let, plus interest on Rent and Additional Rent when due at the rate of six (6%) percent per annum.

11.6.2 LESSOR shall be entitled, but is not obligated, to re-let all or any part of the Leased Premises in LESSOR's name or otherwise, for any duration, on any terms, including but not limited to any provisions for concessions or free rent, or for any amount of rent that is higher than that in this Lease.

11.6.3 LESSOR's election to not re-let all or any part of the Leased Premises shall not release or affect LESSEE's liability for damages. Any suit that LESSOR brings to collect the amount of the deficiency for any rental period will not prejudice in any way LESSOR's rights to collect the deficiency for any subsequent rental period by a similar proceeding. In putting the Leased Premises in good order or in preparing it for re-letting, LESSOR may alter, repair, replace, landscape, remove any unfinished structures or decorate any part of the Leased Premises in any reasonable way that LESSOR considers advisable and necessary to re-let the Leased Premises. LESSOR's alteration, repair, removal of unfinished structures, replacement, landscape or decoration will not release LESSEE from liability under this Lease.

11.6.4 LESSOR is not liable in any way for failure to re-let the Leased Premises, or if the Leased Premises are re-let, for failure to collect the rent under the re-letting. LESSEE will not receive any excess of the net rents collected from re-letting over the sums payable by LESSEE to LESSOR under this Section.

11.6.5 The obligations of LESSOR under this Lease do not constitute personal obligations of the public officials, charter officers, employees or agents of LESSOR, and LESSOR will not seek recourse against the public officials, charter officers, employees or agents of LESSOR or any of their personal assets for such satisfaction. LESSOR shall not be liable for consequential, special, punitive, indirect or exemplary damages to LESSEE.

11.7 **Insolvency or Bankruptcy**. Subject to the provisions hereof respecting severability, should LESSEE at any time during the Term suffer or permit the appointment of a receiver to take

possession of all or substantially all of the assets of LESSEE, or an assignment of LESSEE for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency, bankruptcy, or reorganization act, such action shall at LESSOR's option, constitute a breach and default of this Lease by LESSEE and LESSEE agrees to provide adequate protection and adequate assurance of future performance to the LESSOR which will include, but not be limited to the following:

11.7.1 All monetary and non-monetary defaults existing prior to the breach or default referenced above shall be cured within the time specified above and shall include all costs and reasonable attorneys' fees expended by LESSOR to the date of curing the default.

11.7.2 All obligations of the LESSEE must be performed in accordance with the terms of this Lease and Agreements. If at any time during the pendency of the bankruptcy proceeding the LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Lease or Agreements, or fails to cure any pre-filing default, the LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C.§ 362 TO ENFORCE ITS RIGHTS UNDER THIS LEASE AND UNDER STATE LAW INCLUDING BUT NOT LIMITED TO ISSUANCE AND ENFORCEMENT OF A JUDGMENT OF EVICTION, WRIT OF ASSISTANCE AND WRIT OF POSSESSION.

11.8 **Condemnation**. Upon a condemnation, any awards are subject to the terms of the Agreements, it being acknowledged that Facilities Landlord holds all right, title and interest in the ISHOF Improvements.

11.9 **Holding Over**. LESSEE will, at the termination of this Lease by lapse of time or otherwise yield immediate possession of the Leased Premises. Without limiting LESSOR's rights and remedies set forth in this Lease, in the event of holding over by LESSEE after the expiration of the Lease Term or other termination of this Lease, or in the event LESSEE continues to occupy the Leased Premises after the termination of LESSEE's right of possession or occupancy of the Leased Premises subsequent to such termination or expiration shall be that of a tenancy at sufferance and in no event for month-to-month or year-to-year, but LESSEE shall, throughout the entire holdover period, be subject to all the terms and provisions of this Lease and shall pay for its use and occupancy an amount (on a per month basis without reduction for any partial months during any such holdover) equal to double the Rent paid the year immediately preceding the holdover period for the Leased Premises. No holding over by LESSEE or payments of money by LESSEE to LESSOR after the expiration of the term of this Lease shall be construed to extend the Lease Term or prevent LESSOR from recovery of immediate possession of the Premises by summary proceedings or otherwise.

11.10 **Cumulative Remedies**. LESSOR's remedies contained in the Lease are in addition to the right of a Landlord under Florida Statutes governing non-residential Landlord-Tenant relationships and to all other remedies available to a landlord at law or in equity.

11.11 **Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Tenant certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector

List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. The City may terminate this Agreement at the City's option if the Tenant is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israeli has been engaged in business operations in Cuba or Syria, as defined in Section 287.135,Florida Statutes (2020), as may be amended or revised.

ARTICLE 12 - MISCELLANEOUS

12.1 **Requirement for Notice**. LESSEE shall give LESSOR, HOFP and the Facilities Manager prompt written notice of any accidents on, in, over, within, under and above the Leased Premises in which damage to property or injury to a person occurs. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Lease, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand-delivery, overnight delivery by a nationally recognized service such as Federal Express, or by email to the addresses set forth below, or at such other address or addresses and to such other person or firm as LESSOR or LESSEE may from time to time designate by notice as herein provided. All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder: (a) upon receipt, if hand-delivered or (b) the next day if by overnight delivery.

To: Lessee

Chief Executive Officer
1 Hall of Fame Drive
Fort Lauderdale, Fl 33316

To: Lessor

City Manager
City of Fort Lauderdale
101 NE Third Avenue,
Fort Lauderdale, FL 33301

With a Copy to:
City Attorney
City of Fort Lauderdale
1 East Broward Blvd., Suite 1605
Fort Lauderdale, Fl 33301

To:

Hensel Phelps Services LLC
888 SE 3rd Avenue, Suite 200
Fort Lauderdale, Fl 33316

To: HOFP
c/o Capital Group P3
Development of Florida LLC
55 NE 5th Avenue, Suite 501
Boca Raton, Fl 33432
Attn: Mario Caprini

12.2 **Time Is of The Essence**. Time is of the essence as to the performance of all terms and conditions under this Lease.

12.3 **LESSOR'S Cumulative Rights**. LESSOR's rights under this Lease are cumulative, and LESSOR'S failure to promptly exercise any rights given under this Lease shall not operate or forfeit any of these rights.

12.4 **Modifications, Releases and Discharges**. No modification, release, discharge or waiver of any provision of this Lease will be of any effect unless it is in writing and signed by the LESSOR and LESSEE.

12.5 **Time**. In computing any period of time expressed in day(s) in this Lease, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday nor legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

12.6 **Captions.** The captions, headings and title of this Lease are solely for convenience of reference and are not to affect its interpretation.

12.7 **Survival**. All obligations of LESSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this lease shall survive the expiration or earlier termination of the Term hereof.

12.8 **Delays beyond control of Lessor or Lessee**. Whenever a period of time is herein prescribed for action to be taken by LESSOR or LESSEE, LESSOR or LESSEE shall not be liable or responsible for and there shall be excluded from the computation for any such period of time, any delays due to causes which are beyond the control of LESSOR or LESSEE. Financial inability to perform or lack of funding shall not be deemed a cause beyond the control of LESSEE.

12.9 **Assignment, Pledge, Security Interest**. LESSEE may not, without LESSOR's prior written consent, grant a mortgage or other security interest, in its leasehold interest in the Leased Premises. Any grant by LESSEE of a mortgage or security interest in its leasehold interest by LESSEE without LESSOR'S prior written consent will be null and void. Nothing herein shall be construed as a right to encumber or subordinate the interest of the LESSOR in the Leased Premises, of which encumbrance or subordination is prohibited.

12.10 **Interpretation of Lease; Severability**. This Lease shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or

situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Lease is to be enforced to the fullest extent permitted by law. Each covenant, term, condition, obligation or other provision of this Lease is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Lease, unless otherwise expressly provided. All terms and words used in this Lease, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

12.11 **Successors**. This Lease shall be binding on and inure to the benefit of the parties, their successors and permitted assigns.

12.12 **No Waiver of Sovereign Immunity**. Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency, including LESSOR, to which sovereign immunity may be applicable. Nothing herein shall be considered as a waiver of the limitations set forth in Section 768.28, Florida Statutes, as amended.

12.13 **No Third-Party Beneficiaries**. Except as may be expressly set forth to the contrary herein, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third-party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by Lessor to be sued by third parties in any manner arising out of any Lease.

12.14 **Non-Discrimination**. LESSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

12.15 **Records.** Each party shall maintain its own respective records and documents associated with this Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

12.15.1 LESSEE and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Leased Premises shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the services rendered.

(b) Upon request from CITY's custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to LESSEE for the duration of the Lease and as to

Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to CITY.

(d) Upon completion of said construction at the Leased Premises, transfer, at no cost, to CITY all public records in possession of LESSEE or Contractor or keep and maintain public records required by CITY to perform the service. If Contractor transfers all public records to CITY upon completion of the construction on the Leased Premises, LESSEE and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LESSEE or Contractor keeps and maintains public records upon completion of any construction on the Leased Premises, LESSEE and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

(e) **If LESSEE or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to LESSEE or Contractor's duty to provide public records relating to its contract, contact the CITY's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.**

12.16 **Entire Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this 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.

12.17 **Preparation of Agreement**. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease has been their joint effort.

12.18 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Lease and, therefore, is a material term hereof Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

12.19 **Governing Law**. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, LESSEE expressly waives whatever other privilege to venue it may otherwise have.

12.20 **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, pandemics, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LESSEE be deemed Force Majeure.

12.21 **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 your county public health unit.

12. 22 **Loss of Non-Profit Status**. LESSEE's Parent Company is a tax-exempt organization as recognized by the Internal Revenue Service. If the Parent Company non-profit status is revoked by the IRS due to Parent Company or LESSEE's actions (as opposed to changes in the law governing non-profits), such revocation shall constitute an event of default under this Lease and LESSOR shall be entitled to exercise any and all remedies available under this Lease, including, termination of this Lease.

12.23 **Broker**. Each party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, or taken any action that would result in any real estate broker's, finders, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated by this Lease. Each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party from a breach of the representation made by the indemnifying party in this Section.

12.24 **Public Entity Crime**. As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, LESSEE certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Commencement Date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

12.25 **Waiver of Jury Trial.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

12.26. **Governing Body**. During the term of this Lease, LESSOR shall have the right to appoint one voting member, with full rights, powers and privileges, to the governing body of the LESSEE and LESSEE shall amend its charter documents, if necessary to authorize this power of appointment.

12.27 **Florida Foreign Entities Act**. Pursuant to the Florida Foreign Entities Act, Sections 692.202-205, Florida Statutes, Foreign Principals of Foreign Countries of Concern are prohibited from owning or acquiring any interest in certain types of Florida real property. LESSEE represents that neither it nor, to the best of LESSEE's knowledge, after due inquiry, any of LESSEE's principals, officers, directors, employees, subsidiaries, affiliates, agents or representatives, is a Foreign Principal as defined in the Florida Foreign Entities Act. LESSEE further represents and warrants that it, to the best of LESSEE's knowledge, after due inquiry, its principals, officers, directors, employees, subsidiaries, affiliates, agents and representatives are and have been in compliance, and will comply strictly throughout the performance of this Sublease with the Florida Foreign Entities Act, and LESSEE has instituted and maintains policies and procedures reasonably designed to promote and achieve compliance with the Florida Foreign Entities Act and with the representations and warranties contained herein. LESSEE shall not take any action or omit to take any action that it believes, in good faith, would be in violation of the Florida Foreign Entities Act. LESSEE shall notify LESSOR immediately of any non-compliance with or breach of the covenants, representations and warranties contained in this section. LESSOR shall have the right to unilaterally terminate this Lease and/or pursue any other remedies available to it at law or in equity in the event of any non-compliance with or breach of the covenants, representations and warranties contained in this section. LESSEE acknowledges that LESSOR will rely upon the foregoing representations and warranties to establish LESSEE's compliance with the Florida Foreign Entities Act.

12.28 **Dispute Resolution**. If a dispute arises with respect to this Lease, the parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them demanding mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement the parties may use a nonbinding form of dispute resolution other than mediation.

12.29 **Estoppel Certificate**. LESSEE shall from time to time, within thirty (30) days after request by LESSOR or HOFP, execute, acknowledge, and deliver to LESSOR a statement certifying that this Lease is unmodified and in full force and effect (or that the same is in full force and effect as modified, listing any instruments of modification), the dates to which Rent and other charges have been paid, whether or not LESSOR is in default hereunder, whether LESSEE has any claims or demands against LESSOR (and, if so, the default, claim, and/or demand shall be specified) and any other information that may be required by LESSOR, any prospective purchaser, ground lessor or mortgagee of the Leased Premises and such statement may be delivered by LESSOR to any prospective purchaser, ground lessor or mortgagee of the Leased Premises and may be relied upon by such prospective purchaser, ground lessor or mortgagee.

12.30 **Cross Default**. Contemporaneously with execution of this Lease, LESSOR and the Parent Company have entered into a similar sublease. A default under the sublease with the Parent Company shall be deemed a default under this Lease and a default under this Lease shall be deemed a default under the Parent Company's sublease, in which event LESSOR shall be entitled to exercise any and all remedies provided by law, including without limitation the right to pursue damages and/or the right to pursue equitable remedies such as injunctive relief or specific performance.

[Signature Pages to Follow]

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

WITNESSES:

Scott Wyman
[Witness print or type name]

Donna Varisco
[Witness print or type name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE, a Florida municipal corporation

By: _____
Dean J. Trantalis, Mayor

Date: 5/24/24

By: _____
Susan Grant, Acting City Manager

Date: 5/23/24

ATTEST:

_____
David R. Soloman, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:
Thomas J. Ansbro, City Attorney

_____
Lynn Solomon, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization this 24 day of May, 2024, by Dean J. Trantalis, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

_____
Notary Public Signature

(SEAL)

KRYSTAL LAZCANO
Notary Public - State of Florida
Commission # HH 520297
My Comm. Expires Apr 24, 2028
Bonded through National Notary Assn.

Krystal Lazcano
Name of Notary Typed, Printed or Stamped

My Commission Expires: April 24, 2028

HH 520297
Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization this 2nd day of May, 2024, by Susan Grant, Acting City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

REBECCA MCCLAM
Notary Public - State of Florida
Commission # HH 306617
My Comm. Expires Aug 29, 2026
Bonded through National Notary Assn.

Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

My Commission Expires: 8/29/26

HH306617
Commission Number

WITNESSES:

LINDA CARROLL
Type or print name

JAMES CARROLL
Type or print name

ISHOF PENINSULA LLC,
a Florida limited liability company,
By: INTERNATIONAL SWIMMING HALL OF FAME, INC., a Florida not-for-profit corporation, its Manager

By: _____
William Kent, Chairman

Attest: _____
Mike Dooley, Secretary

Date: 3/19/2024

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this 19th day of May, 2024, by William Kent, Chairman and Mike Dooley, Secretary of INTERNATIONAL SWIMMING HALL OF FAME, INC., a Florida not-for-profit corporation, as the Manager of ISHOF PENINSULA LLC, a Florida limited liability company on behalf of said company. He/She/They is/are personally known to me or produced (Insert Proof of Identification) _____ as identification and did / did not take an oath.

(SEAL)

Denise Wilmot Bernard
Notary Public
State of Florida
Comm# HH096194
Expires 2/22/2025

_____
Notary Public signature

Denise Wilmot Bernard
Name Typed, Printed or Stamped
My Commission Expires: 2/22/25
Commission Number: HH096194