

COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (“AGREEMENT”), is made and entered into this _____ day of September, 2024, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, 101 NE Third Avenue, Suite 2100, Fort Lauderdale, Florida 33301 (hereinafter “CITY”),

And,

Water Taxi of Fort Lauderdale LLC, a Florida Limited Liability Company organized under the laws of the State of Florida, whose principal address is 366 SE 17th Street, Fort Lauderdale, Florida, 33316 (hereinafter “WTFL”).

WHEREAS, the CITY holds all right, title, or interest, and is the owner of those lands located on State Road AIA adjacent to Bahia Mar and City Fire Station No. 49, (“Property”), as more particularly described in **EXHIBIT A** and CITY intends to grant a leasehold interest in its fee simple interest in the Property; and

WHEREAS, WTFL is a Limited Liability Company organized under the laws of the State of Florida for the purposes of operating a city water taxi service, including developing, operating and maintaining a public water taxi terminal facility and accessory uses including a restaurant, known as The Landing (“The Landing”); and

WHEREAS, on May 12, 2023, the City of Fort Lauderdale received an unsolicited proposal pursuant to Section 255.065, Florida Statutes, from WTFL, to develop, construct, operate and maintain water taxi service terminal, restaurant and event space; and

WHEREAS, pursuant to Resolution No. 23-208, the City Commission, at its meeting of September 19, 2023, determined that the unsolicited proposal submitted by WTFL serves a public purpose as a marine terminal facility and public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes; and

WHEREAS, pursuant to Resolution No. 23-297, the City Commission, at its meeting of December 19, 2023, declared its intent to enter into a Comprehensive Agreement with WTFL encompassing therein the development, construction, operation, and maintenance of the Property as particularly described in the unsolicited proposal and related documents, and as defined in Section 1.3.4 and Section 5.1 herein (“Qualified Project”); and

WHEREAS, pursuant to Resolution No.23-208, the City Commission further declared its intent to accept other proposals for the same project in accordance with Section 255.065, Florida Statutes, for a period of 45 days after the initial date of publication; and

WHEREAS, the CITY published once a week for two weeks, in the Florida Administrative Register and a newspaper of general circulation, a Notice of its intent to accept other proposals for the same project for a period of 45 days after the initial date of publication; and

WHEREAS, no other proposals were received for the same project during the 45 day period; and

WHEREAS, on December 19, 2023, the City Commission passed Resolution 23-297 providing notice of its decision to proceed with the unsolicited proposal submitted by WTFL to develop, operate, and maintain a public water taxi terminal facility and accessory uses including restaurant on the Property; and

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

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 CITY and WTFL agree as follows:

ARTICLE 1.

GENERAL CONDITIONS

1.1. Design Professionals. Architectural and engineering services shall be procured from licensed, independent design professionals retained by WTFL or furnished by licensed employees of WTFL, as permitted by law. If the design professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between WTFL and the design professional.

1.1.1. In accordance with §255.065(3)(a)(5), Fla.Stat., CITY reserves the right to retain architectural, engineering, and landscape architectural licensed professionals to evaluate the Qualified Project and advise CITY through the completion of the design and construction of the Qualified Project.

1.2. Exhibits. True and correct copies of all exhibits referenced in this Agreement will be initialed by the Parties and attached to this Agreement, and such exhibits will thereafter be incorporated into this Agreement by this reference.

1.3. Definitions.

1.3.1. “Comprehensive Agreement” or “Agreement” means this Agreement between the CITY and WTFL, including all the attached Exhibits.

1.3.2. “Parties” means the CITY and WTFL collectively.

1.3.3. “Property” means the real estate more particularly described in **EXHIBIT A** and all attachments and improvements and appurtenances thereto now existing or hereafter constructed pursuant to the Agreement or otherwise and shall include the phrase “or any portion thereon,”

1.3.4. “Qualified Project” means the design and construction on the Property for a public water taxi terminal facility and accessory uses including restaurant as conceptually depicted in **EXHIBIT B** attached hereto and incorporated herein. CITY understands and agrees that the renderings attached hereto are conceptual and are subject to change through the design and permitting process.

1.3.5. “Accessory Use” means a use that is, customary, incidental and subordinate to the principal use as permitted and located on the same development site as the principal use of the Property.

ARTICLE 2.

TERM OF COMPREHENSIVE AGREEMENT

2.1. Term. The Term of this Agreement commences on the “Effective Date” and runs for a period of fifty (50) years, unless the parties terminate the Agreement earlier (“Term”). In the event that any governmental authority having jurisdiction and legal authority imposes a restriction that materially limits or terminates a Permissible Use hereunder (as such term is defined in Section 5.1.1) (a “Termination of Use”), then WTFL shall have the right to terminate this Agreement upon thirty (30) days advance written notice to CITY. In the event of the occurrence of a Termination of Use, CITY may, at its election, consider and may consent to a substitute Permissible Use that is consistent with applicable zoning. The term of this agreement may be extended by mutual agreement of the parties so long as such renewal does not violate any applicable law or restriction affecting the Property. For purposes of this Agreement, “Term” shall include any additional extension period agreed upon by the parties.

2.2. Effective Date. This Agreement shall be effective on the date it is signed by both parties (the “Effective Date”). Upon the effectiveness of this Agreement, that certain Dockage Use Agreement entered into on March 5, 2024, by the parties, shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Agreement.

2.3. Recordation Memorandum of Lease. A Memorandum of Lease, to be executed by both parties contemporaneously with the execution of this Agreement, shall be recorded by WTFL, at WTFL’s expense, in the Public Records of Broward County, Florida on or about the Effective Date of this Agreement.

ARTICLE 3
LEASE OF THE PROPERTY

3.1. Lease. On the terms and conditions set forth in this Agreement, and in consideration of the WTFL's performance of all other obligations and terms of this Agreement, as of the Effective Date, the CITY hereby leases to WTFL and WTFL hereby leases from CITY and CITY grants WTFL a possessory interest in and to the Property, as defined herein, for the Term of the Lease.

3.2. Leased Premises. A Description of the Property that CITY leases to WTFL and WTFL rents from CITY is attached hereto as **EXHIBIT A**. WTFL hereby leases the Property from CITY subject to, and WTFL hereby agrees to comply with: (i) all applicable building codes, zoning regulations, and municipal, county, state and federal laws, ordinances and regulations governing or regulating the Property or its use by WTFL; (ii) all covenants, easements and restrictions of record pertaining to the Property; and (iii) the terms, conditions and restrictions contained within this Agreement. It is expressly found by the City Commission that this Agreement furthers and serves a significant public purpose and provides a significant public benefit. WTFL hereby agrees that it has done its due diligence and has independently verified that the intended use of the property is permitted by current land use regulations.

3.3. Limitations on Grant of Leasehold Interest. Except to the extent modified by the terms of this Agreement, the grant of a Leasehold interest by CITY to WTFL upon the Property is subject to the following:

3.3.1. Each condition, restriction and limitation recorded against the Property as of the Effective Date of this Agreement; and

3.3.2. 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 Property and with legal authority to impose such restrictions; and

3.3.3. Each question of title and survey that may arise in the future as to the Property, but WTFL acknowledges that it has had the opportunity to examine the boundary lines and the CITY's present title to the Property, and that it is satisfied with respect to the accuracy and sufficiency of both; and

3.3.4. WTFL's satisfactory performance of all of the terms and conditions contained in this Agreement; and

3.3.5. WTFL's satisfactory approval of underground and overhead utilities facilities, including, but not limited to, water, wastewater, stormwater and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

3.3.6. The CITY, in its proprietary capacity, through its Director of the Department of Development Services, and/or the City Manager shall have approved the proposed construction contained in the Plan and Specifications pursuant to Section 5 through and consistent

with the applicable criteria and procedures set forth in the CITY's Unified Land Development Regulations.

3.4 Quiet Enjoyment. Except as otherwise expressly set forth herein, CITY represents and warrants that it has full right and authority to enter into this Agreement and that WTFL, while paying the Rent and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Property for the term hereof without hindrance or molestation from CITY subject to the terms and provisions of this Agreement, the terms, conditions, restrictions and covenants, including right of access, all applicable laws and regulations, and all other matters of record as of the Effective Date of this Agreement.

3.5. Contract Administrator. The Contract Administrator for CITY under this Agreement shall be the City Manager, or his designee. The Contract Administrator for WTFL under this Agreement shall be WTFL's President and CEO. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the respective Contract Administrator.

ARTICLE 4

RENT AND TAXES

4.1. Amount and Payment of Rent. As rent for the Property, WTFL shall pay to CITY the following:

4.1.1. Annual rent for the first year of the Term shall equal One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) commencing with the Effective Date of this Agreement and payable in equal monthly payment due on the 1st day of each month through the balance of the Term (the "Rent");

4.1.2. The Rental specified in paragraph 4.1.1 shall be increased annually by five percent (5%) commencing on the first anniversary of the Effective Date and on every anniversary day thereafter.

4.2. Percentage Rent. As rent for the Property, WTFL shall pay to CITY the following:

4.2.1. Annual Percentage Rental shall be payable annually commencing on the Sixth (2030) Rental Year and on each Rental Year thereafter where Gross Sales for such Rental Year exceed WTFL's Annual Breakpoint for such Rental Year.

4.2.2. Annual Percentage Rental shall equal one half of one percent (.5%) of Gross Sales in excess of WTFL's Annual Breakpoint of \$8,500,000. The Annual Breakpoint specified in paragraph 4.2.2. shall be increased annually by five percent (5%) commencing on the Seventh (2031) Rental Year on the anniversary of the Effective Date and on every anniversary day thereafter.

4.2.3. The first "Rental Year" shall commence on the Effective Date and shall end on the last day of the twelfth calendar month thereafter; thereafter each Rental Year shall consist of successive periods of twelve calendar months. Any portion of the Term remaining at the end

of the last full Rental Year shall constitute the final Rental Year and Rental shall be apportioned therefor. For each Rental Year which does not include 365 days WTFL's Annual Breakpoint shall be prorated by multiplying WTFL's Annual Breakpoint by a fraction, the numerator of which shall equal the actual number of days in such Rental Year and the denominator shall be 365 or 366 as the case may be.

4.2.4. "Gross Sales" means the actual sales prices of all goods, wares and merchandise sold, leased, licensed or delivered and the actual charges for all services performed by WTFL or by any subWTFL, licensee or concessionaire in, at, from, or arising out of the use of the Premises, whether for wholesale, retail, cash or credit, or otherwise, without reserve or deduction for inability or failure to collect. Gross Sales shall include, without limitation, sales and services (a) where the orders therefor originate in, at, from, or arising out of the use of the Premises whether delivery or performance is made from the Premises or from some other place, (b) made or performed by mail, telephone, facsimile, or telegraph order, (c) made or performed by means of mechanical or other permitted vending devices in the Premises, (d) which WTFL or any subWTFL, licensee, concessionaire or other person in the normal and customary course of its business, would credit or attribute to its operations at the premises or any part thereof, and (e) which WTFL is paid for naming rights as set forth in this Agreement. Deposits shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of whether or when WTFL receives payment therefor. No franchise or capital stock tax and no income or similar tax based on income or profits shall be deducted from Gross Sales.

The following shall be excluded from Gross Sales: (i) any exchange of merchandise between stores of WTFL where such exchange is made solely for the convenient operation of WTFL's business and not for the purpose of consummating a sale made in, at or from the Premises, or for the purpose of depriving CITY of the benefit of a sale made in, at, or from the Premises, or which would otherwise be made in or at the Premises, (ii) returns to shippers or manufacturers, (iii) cash or credit refunds to customers or transactions (not to exceed the actual selling price of the item returned), otherwise included in Gross Sales, (iv) sales of trade fixtures, machinery and equipment after use thereof in the conduct of WTFL's business, (v) amounts collected and paid by WTFL to any government for any sales or excise tax, and (vi) the amount of any discount on sales to employees.

4.2.5. WTFL shall deliver to CITY: (a) within ninety (90) days after the close of each Rental Year of the Term, a written report signed by an independent certified public accountant, showing the Gross Sales made in the preceding Rental Year which shall conform to and be in accordance with generally accepted accounting principals and (b) a copy of WTFL's sales tax returns simultaneously with the filing of such returns with the applicable governmental authority. If after ten (10) days written notice, WTFL shall fail to deliver timely any such statement to CITY, CITY shall have the right to employ a certified public accountant to examine all records required by this Section, as may be necessary to certify the amount of WTFL's Gross Sales, and WTFL shall pay to CITY the cost thereof as Additional Rental.

4.2.6. For the purpose of permitting verification by CITY of any amounts due as Annual Percentage Rental, WTFL will; (i) cause its business to be operated so that a duplicate

sales slip, invoice or non-resettable cash register receipt, serially numbered, or other device for recording sales, shall be issued with each sale or transaction, whether for cash, credit or exchange, and (ii) keep and preserve, at the WTFL Legal Address, for at least three (3) years after each Rental Year, a general ledger, receipts and disbursement journal and such sales records and other supporting documentation together with original or duplicate books and records which shall disclose all information required in accordance with generally accepted accounting principles. At any time or from time to time after reasonable advance notice to WTFL, CITY or any Mortgagee, their agents and accountants, but not more than once annually, shall have the right during business hours to make any examination or audit of such books and records which CITY or such Mortgagee may desire that relate to WTFL's Gross Sales. If such audit shall disclose a deficiency in any Rental Year for Annual Percentage Rental in excess of the Annual Percentage Rental theretofore paid by WTFL for such period, WTFL shall promptly pay such deficiency. If such audit shall disclose that WTFL's statement of Gross Sales is at variance with actual Gross Sales to the extent of three (3%) percent or more, or WTFL's records are inadequate to disclose Gross Sales, WTFL shall, in addition, promptly pay the reasonable cost of the audit and interest at the default rate on all such additional Annual Percentage Rental then payable, from the date such Annual Percentage Rental are due.

4.3 Sales Tax. To the extent required by law and unless exempt by law, WTFL shall pay to CITY the equivalent of seven percent (7%) of all amounts paid as Rent hereunder, which sum is to be paid to the State of Florida by the CITY in respect of sales or use taxes. Should such tax rate change under the Florida Sales Tax Statute or other applicable statutes, WTFL shall pay CITY the amounts reflective of such changes. To the extent applicable, WTFL shall pay CITY in conjunction with all sums due hereunder, any and all applicable sales, use or other similar tax and any interest or penalties assessed therein ("Sales Tax") simultaneously with such payment.

4.4. Taxes, Fees, Special Assessments, etc. Except as otherwise provided in this Agreement, beginning on the Effective Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind including both ad valorem and non-ad valorem taxes, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Property, 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 WTFL in accordance with the provisions of this Agreement, it being the intent of the parties that, except as may be specifically provided for herein, WTFL is responsible for paying all the expenses and obligations that relate to the Property or any improvements thereon and that arise or become due during the Term of this Agreement. WTFL shall not be required to pay any Targeted Taxes imposed by CITY. If Lessor is held liable for Targeted Taxes and WTFL fails to pay, then CITY shall have the right to terminate this Agreement. In additional Targeted Taxes in which CITY is obligated to pay shall be deemed Additional Rent under this Agreement. For purposes of this Agreement, "Targeted Taxes" shall mean any Tax created, levied, assessed, confirmed, adjudged, charged or imposed on or against (A) the activities conducted at the Property by WTFL, or any of its affiliates or invitees, or any income, revenues, profits or other consideration generated therefrom (unless the Tax applies to substantially all other businesses or persons in the jurisdiction of the applicable governmental entity or income, revenues, profits or other consideration therefrom); (B) the gross receipts or income of the direct or indirect owners of WTFL (unless the Tax is one of general application levied against or imposed on the

gross receipts or income of all people, enterprises or owners of enterprises, as the case may be, within the jurisdiction of the applicable governmental entity; (C) any capital gain on or appreciation in the investment in the Property (unless the Tax is one of general application); or (D) the sale of any asset or ownership interest in the WTFL or any of its affiliates (unless the Tax is one of general application). The term "Tax" shall mean any general or special, ordinary or extraordinary, tax imposition, assessment, levy, usage fee, excise or similar charge (including any ad valorem or other property taxes), however measured, regardless of the manner of imposition or beneficiary, that is imposed by a governmental entity.

4.5. Additional Rent Payments. In addition to the annual rent due under Sections 4.1 and 4.2 and sums due under Sections 4.2 and 4.3 hereof, all other payments that WTFL is obligated to make under this Agreement shall be considered "Additional Rent" regardless of whether the payments are so designated. Except as provided in Paragraph 4.7 hereof, "WTFL's Challenge of Tax," all additional payments are due and payable within thirty (30) days after rendition of a statement therefor, with the exception of ad valorem taxes which must be paid within thirty (30) days when due.

4.6. Utility or Service Charges. WTFL agrees to pay all charges for utility service including, but not limited to charges for gas, electricity, telephone, telecommunications or other illumination, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Property.

4.7. WTFL's Responsibilities regarding Governmental Charges or Services Giving Rise to Liens. Subject to the provisions of Section 4.7 respecting WTFL's right to challenge the validity of any Tax, tax claim, assessment, fee or other governmental charge against the Property, the use thereof, improvements thereto or personalty located thereon, WTFL must pay all Taxes and other governmental fees, charges or assessments that are related to the Property or personalty situated thereon or operations conducted thereon and that arise during the Term. WTFL 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:

4.7.1. All Taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees;

4.7.2. All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Property or use thereof or improvements thereto or personalty situated thereon;

4.7.3. All such charges that are assessed, levied, confirmed or imposed upon the Property or use thereof or improvements thereto or personalty situated thereon;

4.7.4. All such charges that arise from, become payable from, or with respect to, or become a lien on any of the following:

4.7.5. All or any part of the Property or use thereof or improvements thereto or personalty situated thereon;

4.7.6. All or part of the improvements on the Property or personalty situated thereon;

4.7.7. Any appurtenance to the Property;

4.7.8. The rent and income received by the WTFL from any subtenant, licensee, concessionaire or other party in possession;

4.7.9. Any use or occupation of the Property;

4.7.10. Any document to which WTFL is a party and that creates or transfers an interest or estate in the Property;

4.7.11. Sales or use Tax arising from WTFL's operations or the operations of any sublessees or licensees; or

4.7.12. Any Taxes or charges applicable to the rents paid under this Agreement.

4.8. WTFL's Challenge of Tax. WTFL 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 Agreement and challenge any such Tax as a Targeted Tax, provided WTFL complies with terms and conditions of this Section. The WTFL must give CITY written notice of WTFL's intention to contest. In the event of a contest, the disputed charge need not be paid until finally adjudged to be valid, except as otherwise required by any governmental authority, provided that, unless otherwise waived by CITY, WTFL must furnish CITY with a bond, acceptable to the City Manager, with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by CITY. The bond or cash escrow must be in an amount that is equal to the amount of the Taxes, claim, charge or assessment being contested and must be conditioned upon payment of the Taxes, claim, charge or assessment once the validity has been determined. WTFL must give the written notice accompanied by evidence of the bond or escrow to CITY not later than sixty (60) days before the contested taxes would otherwise become delinquent. At the conclusion of such contest, WTFL shall pay the charge contested to the extent it is held valid, together with all court costs, interest, penalties, and other expenses relating thereto and will indemnify and hold harmless CITY from any costs, expenses, and damages incurred in connection with such proceedings, including reasonable attorneys' fees.

4.9. CITY'S Remedy for WTFL'S Nonpayment. If WTFL 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 Agreement, the CITY may pay them. Upon the CITY's demand, WTFL must pay the CITY all amounts CITY has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of twelve percent (12%) per annum from the date CITY 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 the CITY demands repayment or reimbursement from WTFL, the CITY is entitled to collect or enforce these payments in the same manner as a payment of rent.

ARTICLE 5.

USE OF PROPERTY, CONSTRUCTION, CAPITAL IMPROVEMENTS, MAINTENANCE

5.1. The Qualified Project. The CITY authorizes WTFL to design, develop and construct the Qualified Project on a “turn-key” basis and as conceptually depicted in **EXHIBIT B** attached hereto and incorporated herein. The Parties agree that the Qualified Project shall be designed, constructed, developed, and completed by WTFL on the Property in a first-class workmanlike manner, and as provided in this Agreement. WTFL shall not be responsible for any “off-site” improvements necessary to serve the Qualified Project, except such “off-site” improvements as are required by the development process pursuant to all applicable laws, codes, and ordinances, including but not limited to, the CITY’s Unified Land Development Regulations (“ULDR”), as may be amended from time to time. WTFL shall, in consultation with the CITY and in accordance with all applicable laws, codes, and ordinances, select the services of the Qualified Project design and construction team, including but not limited to the consultants, professionals, architects, engineering services, surveyors and landscape architects necessary to design and construct the Qualified Project and define its elements in detail sufficient for the Qualified Project’s purposes and to fulfill the Qualified Project’s construction requirements. WTFL may engage outside consultants on the CITY’s approved list of outside consultants to expedite the review process.

5.1.1. Permissible Uses. The Property shall be used by WTFL for the purpose of improving the Property, including new buildings and structures for a public water taxi terminal facility and accessory uses including restaurant described in **EXHIBIT C** attached hereto.

5.1.2. The Qualified Project’s design and construction must be acceptable to the CITY and WTFL. CITY, as owner of the Property and as a party to this Agreement, shall have the right to review and comment upon the project design and construction documents at any time. Approval by the CITY shall not be unreasonably withheld.

5.1.3. Completion. WTFL shall use commercially reasonable efforts to complete the Qualified Project, as defined herein, within three (3) years of the Effective Date, however WTFL may ask for and CITY may grant reasonable extensions for good cause shown. Failure of WTFL to complete the Qualified Project within three (3) years of the Effective Date shall constitute a material default pursuant to Article 12 of this Agreement.

5.1.4. Cost of the Qualified Project. The cost of the Qualified Project shall be fully financed by WTFL through private funds to be evidenced by providing the CITY with appropriate and sufficient letters of credit or other documents from a financial institution evidencing WTFL’s ability to fully finance the Qualified Project, to the CITY’s reasonable satisfaction, within 90 days of the execution of this Agreement.

5.1.5. Cost Overruns. To the extent that there are cost overruns associated with the construction of the Qualified Project, any such cost overruns shall be paid by WTFL.

5.1.6. City Approval. CITY shall have a period of sixty (60) days from WTFL’s delivery of the design and development budget documentation to the CITY to review and comment

on the project design and design documents submitted in accordance with the terms of this Agreement. In the event the CITY does not provide its response within said sixty (60) day period, said design and design documents shall be deemed to be approved. Additionally, once the CITY has approved the design and budget of the Qualified Project, any changes requested by the CITY shall require a change order. Once the project design and design documents have been approved pursuant to this Section, the design and design documents shall be referred to as the “Approved Plans and Specifications”.

5.2. Management of the Qualified Project Construction. WTFL shall manage and oversee the construction of the Qualified Project in accordance with the design documents and construction documents approved by the CITY or any further development of the aforesaid documents that have been approved in writing by the CITY.

5.2.1. In accordance with Section 255.065(5)(b)(1) and (7)(a)(1), Florida Statutes, WTFL will (i) provide CITY with a guarantee by WTFL, of the performance of its obligations under this Agreement and the payment of all subcontractors and (ii) cause its general contractor to provide CITY with public performance and payment bonds in the amount equal its contract price which bond(s) shall meet the requirements of Section 255.05, Florida Statutes with the CITY as dual obligee. Such bond(s) shall be written by a surety licensed to do business in the State of Florida and otherwise acceptable to CITY; provided, however, that the surety shall be rated as “A-1” or better as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. Such bond(s) shall be recorded in the Public Records of Broward County, Florida by said general contractor prior to the commencement of any construction work on the Qualified Project.

5.2.2. WTFL will plan, organize, supervise, monitor, direct, and control the work of the Qualified Project to ensure that it is done in accordance with the Construction Agreement with its general contractor and Approved Plans and Specifications and Development Budget.

5.2.3. WTFL will prepare a Development Budget in accordance with the Construction Agreement with its general contractor, for the construction, and this Agreement. A copy of the Development Budget (“Development Budget”) will be provided to the CITY upon the submission of said Design Build Construction Agreement. A copy of the draft Development Budget for the Qualified Project is attached to this Agreement as **EXHIBIT D** (the “Draft Initial Development Budget”). In the event there are any approved change orders which cause an increase in the overall development costs, WTFL shall have the right to increase said Development Budget.

5.2.4. WTFL shall prepare a Development Schedule in accordance with each Construction Agreement with its general contractor (“Development Schedule”), the Development Budget and this Agreement. A copy of the Development Schedule will be provided to the CITY upon the submission of said Construction Agreement. WTFL shall have the right to revise the Development Schedule; however the Development Schedule shall include the Development Milestones, attached hereto as **EXHIBIT E**, which may not be modified without the CITY’s approval.

5.2.5. WTFL shall consult and coordinate with the City’s Parks and Recreation Department with respect to the scheduling and performance of all construction activities on the

Qualified Project and use its best efforts to mitigate operational impacts to the CITY's programming.

5.2.6. WTFL shall consult and coordinate with the City Fire Department with respect to the scheduling and performance of all construction activities on the Qualified Project and use its best efforts to mitigate operational impacts to the City Fire Department No. 49. Additionally, the design of the Qualified Project, including the dock area and the area for pick up and drop off for ride sharing companies, shall be located in an area where access to and from City Fire Department No. 49 is not impeded. Prior to approval of the Plans and Specifications, WTFL shall obtain approval by the City Fire Department specifically in connection with the access to City Fire Department No. 49 both during and after construction.

5.2.7. During the construction of the Qualified Project, the CITY shall designate a representative to attend the monthly construction meetings to be held with WTFL and the CITY.

5.2.8. During the construction of the Qualified Project, the CITY shall have the right to hire its auditors for purposes of auditing the construction costs. WTFL shall allocate the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000) in the construction budget to pay for such audits ("Construction Audit Budget"). Any audit costs over and above the Construction Audit Budget shall be the sole costs and expense of the CITY.

5.2.9. During the construction of the Qualified Project, the CITY shall have the right to require that WTFL suspend construction activities during major events such as the Fort Lauderdale International Boat Show, concerts at Fort Lauderdale Beach, and major City of Fort Lauderdale events.

5.3. Construction Requirements. Subject to the terms and conditions of this Agreement, in performing the construction of the Qualified Project, WTFL shall:

5.3.1. Provide project designs to the CITY for approval through the CITY's regular site plan development process, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, and obtain all necessary permits, licenses, and other approvals as required by the CITY's ULDR's for the completion of the Qualified Project;

5.3.2. Be responsible for the completion of all work necessary to complete the Qualified Project, and be fully responsible for the payment of all moneys due to any contractor or subcontractor performing the work;

5.3.3. Comply with all applicable federal, state, and local rules and regulations, including the CITY's ULDR's, in completing the Qualified Project. WTFL acknowledges and agrees that this requirement includes compliance with all applicable federal, state, and local health and safety rules and regulations, including, but not limited to (i) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (ii) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (iii) Rules 38F and 38I, Florida

Administrative Code; and (iv) Florida Department of Transportation Manual of Traffic Control and Safe Practices.

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

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

5.3.6. Require all contractors and subcontractors of the General contractor to indemnify and hold harmless CITY and WTFL and its officers, agents, directors, and employees;

5.3.7. In the event of a default under the Construction Agreement with its general contractor as to a particular phase, require an agreement with all of General contractor's contractors and subcontractors, representing that CITY and WTFL are third-party beneficiaries of the contract, entitled to enforce any rights thereunder for their respective benefits, and that, subject to the terms of the applicable contract, CITY and WTFL shall have the same rights and remedies vis-a-vis such contractors and subcontractors that the other party has including, without limitation, the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by CITY or WTFL, resulting from any breach of such contract, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such contractor or subcontractor in the performance of any of its obligations under such contract;

5.3.8. Obtain prior CITY approval, not to be unreasonably withheld, unreasonably conditioned, or unreasonably delayed for any change orders requested by WTFL on any particular phase of the Qualified Project that would materially amend the scope or quality of such phase of the Qualified Project. In the event such change order is requested and/or caused by the CITY, the CITY shall pay for such change order. If the change order is requested and/or caused by the Design Builder or WTFL, WTFL shall pay for such change order request. If the change order is caused by any unknown condition existing at the Property, WTFL shall pay for such change order.

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

5.3.10. Provide CITY with copies of all reports, warranties, design documents and as-builts;

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

5.3.12. Manage the appropriately licensed contractors to ensure that any work not conforming to the Approved Plans and Specification and the Construction Agreement with its general contractor, if applicable, for any particular phase of the Qualified Project is corrected or removed and replaced.

5.4. Compliance With Regulations of Public Bodies. WTFL covenants and agrees that it shall, at its own cost and expense, make such improvements on the Property, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Property, in order to comply with the requirements relating to sanitation, fire hazard, zoning, setbacks, Environmental requirements and other similar requirements designed to protect the public, worker and recreational use environments. WTFL shall not use the Property, nor shall the Property 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 Property.

5.5. Improvements. Upon expiration or termination of this Agreement, any improvements constructed on the Property shall remain with the Property at no additional cost to the CITY. Upon termination or expiration of the Agreement, all right, title and interest in the improvements shall vest in the CITY and WTFL's interest in the improvements is extinguished. All improvement constructed on the premises shall be owned by CITY subject to the leasehold interests of WTFL for the term of the agreement.

5.6. Liability for Personal Property. All personal property, placed or moved onto the Property is at the sole risk of WTFL or other owner of such personal property. CITY shall not be liable for any damage to such personal property, or for personal injuries to WTFL or any of WTFL's subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the Property that arise from any person's tortious acts or omissions, regardless of the status of the person; provided, however, that if the damage or injury is caused by the negligence of CITY's employees acting within the course and scope of their employment, then, to the extent the damage or injury in question is caused by CITY's negligence, then WTFL's liability to CITY hereunder shall be proportionately abated. Nothing herein shall be deemed a waiver of CITY's sovereign immunity.

5.7. Liability for Damages or Injuries. CITY shall not be liable for any damage or injury incurred or sustained in, on or about the Property when such damage or injury results from the tortious acts or omissions of any person, including WTFL's guests, invitees, servants, agents, employees or contractors or trespassers on the Property; provided, however, that if the damage or injury is caused by the negligence of CITY's employees acting within the course and scope of their employment, then, to the extent the damage or injury in question is caused by CITY's negligence, WTFL's liability to CITY hereunder shall be proportionately abated. Further, CITY shall not be liable for any damage or injury to any of WTFL's guests, invitees, servants, agents, employees or contractors or trespassers on the Property, incurred or sustained in, on or about the Property when such damage or injury results from the negligent act or omission of WTFL, its officers, agents or employees, including but not limited to, in damaging any Hazardous substances containment structure installed prior to the Effective Date.

5.8. ADA. WTFL shall have the continuing obligation of compliance with the Americans With Disabilities Act (“ADA”), as same may be amended from time to time, with respect to the Property.

5.9. CITY Permits Fees and Cooperation Regarding Utility Upgrades. WTFL acknowledges that WTFL shall apply for all building, demolition and renovation permits required by CITY or other Governmental Authority that are necessary, required or appropriate in connection with the design, planning, construction, completion, use and occupancy of the Qualified Project (the “Permits”). WTFL shall diligently pursue, facilitate and expedite all actions necessary in order to obtain the Permits.

5.9.1. CITY further acknowledges that, in the event that WTFL determines that the utility servicing the Property (such as electric, water, sewer, gas or other public utility) are insufficient, or inadequate to meet the anticipated utility needs of the Qualified Project, then CITY shall fully cooperate with WTFL to enable WTFL to upgrade, improve or enhance the utility services to the Property for the Qualified Project at WTFL’s expense. Such cooperation shall include, but is not limited to, (i) the grant of easements or other conveyances to better facilitate improvements to utility services for the Lease Premises and the Project; (ii) promptly respond to all requests for approval, consent, review or comment submitted by or on behalf of WTFL; and (iii) provide such other support as reasonably requested by WTFL to obtain approval before any local, state or federal board or agency.

5.9.2. Notwithstanding the foregoing, in no event shall the CITY be required or obligated to issue any permit to upgrade, improve or enhance the utility services to the Property if such upgrade, improvement or enhancement shall in any matter disturb the use of City Fire Station No. 49.

5.10. Emergency Use. This Agreement is subordinate to any emergency use invoked pursuant to Section 252.42, Florida Statutes, as amended or revised, or invoked pursuant to any applicable emergency management program or plan. Upon the termination of such emergency status, CITY shall use its best efforts to cease and/or restore the subject property to its condition prior to the declaration of the emergency.

ARTICLE 6

HAZARDOUS SUBSTANCES

6.1. Definitions. For the purpose of administering this Article, the following terms shall have the meaning as set forth below:

6.1.1. 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.

6.1.2. 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 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 biphenyls, (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., or (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.

6.1.3. 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. For purposes of this Agreement, the Consent Decree shall be deemed a Hazardous Substance Law.

6.2. CITY’S Consent Required. After the Effective Date, no Hazardous Substances shall be brought upon or kept or used in or about the Property by any person whomsoever, unless WTFL first obtains written consent from the CITY’S Contract Administrator, which consent shall not be unreasonably denied. Nothing herein shall prohibit the use of gas-powered automobiles, painting and decorating products normally used to paint or decorate a structure or products used to clean the Property.

6.3. Compliance With Hazardous Substances Laws. During the Term, and with respect to Hazardous Substances brought onto the Property by any person whomsoever other than CITY, its agents, employees, contractors or licensees, WTFL shall have the absolute responsibility to ensure that the Property is used at all times and all operations or activities conducted thereupon are in compliance with all Hazardous Substances Laws and the Consent Decree. With respect to Hazardous Substances brought on to the Property during the Term by any person whomsoever, other than CITY, its agents, employees, contractors or licensees, WTFL shall be liable to CITY for any violation of Hazardous Substances Laws or violation of the Consent Decree as to such Hazardous Substances only.

6.4. Environmental Liabilities.

6.4.1. CITY acknowledges that WTFL shall not be responsible to or liable to CITY for any violation of Hazardous Substances Laws which occurred prior to the Effective Date of this Agreement or for the presence of such Hazardous Substances found on, within or below the Property, or found to have migrated from the Property to another property, where the presence of such Hazardous Substances on or off the Property predates the Effective Date, and which was not caused by WTFL, its employees, contractors, or agents. CITY agrees that WTFL shall have ninety (90) days from the Effective Date to obtain a Phase I Environmental Report (the “Environmental Baseline”) to determine if the Property contains any Hazardous Substances.

6.4.2. As to any Hazardous Substances identified in the Environmental Baseline and/or first present at, under, or within the Property prior to the Effective Date, WTFL only remedy shall be to terminate this Agreement by providing the CITY with thirty (30) days written notice. If WTFL elects not to terminate this Agreement, then WTFL shall be responsible for the clean up of such Hazardous Substances.

6.4.3. Hazardous Substances at, under, or within the Property at levels that are in violation of the Hazardous Substances Laws which occurred prior to the Effective Date but were not identified in the Environmental Baseline, shall be the responsibility of the CITY provided however that the CITY shall not be responsible to reimburse or compensate WTFL its agents, servants, employees, contractors or licensees to the extent that correcting such violations damages the building or any other improvement owned by WTFL.

6.4.4. WTFL shall be solely responsible to correct any violations of law due to the release or discharge of any Hazardous Substances after the Effective Date unless the release or discharge of such Hazardous Substances is caused by the acts or omissions of CITY, its agents, servants, employees, contractors or licensees.

ARTICLE 7.

CONDITION OF PREMISES

7.1. “AS IS” Condition. WTFL acknowledges that it has performed sufficient inspections of the Property in order to fully assess and make itself aware of the condition of the Property, and that, except as specifically provided in Article 6 and this Article 7, WTFL is leasing the Property in an “AS IS” condition. Except as may be expressly set forth in or required by this Agreement, WTFL acknowledges that the CITY has made no other representations or warranties as to the condition or status of the Property and that WTFL is not relying on any other representations or warranties of the CITY, any broker(s), or any agent of CITY in leasing the Property. Except as may be expressly set forth in or required by this Agreement, WTFL acknowledges that neither CITY nor any agent or employee of CITY 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 or with respect to:

7.1.1. The nature, quality or condition of the Property, including, without limitation, the water, soil and geology;

7.1.2. The suitability of the Property for any and all activities and uses which WTFL may conduct thereon;

7.1.3. Notwithstanding the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;

7.1.4. The habitability, merchantability or fitness for a particular purpose of the Property; or

7.1.5. Any other matter with respect to the Property.

WTFL shall maintain the Property in a good state of repair and in a condition consistent with the Permissible Uses for the Property as set forth in **EXHIBIT C**. WTFL shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, the fixtures and equipment that WTFL brings, constructs or places on the Property. WTFL shall repair, replace and renovate the Property, including the structure and all the improvements located thereon as often as is necessary to keep these items in a good state of repair.

7.2. Damage to Property. On CITY's demand, WTFL shall repair all damages to the Property that are incurred or sustained during the Term, where such damages are not caused by CITY or any of its agents, servants, employees, contractors or licensees; provided, however, that if the damage or injury is caused by CITY's tortious acts or omissions, or if the tortious acts or omissions of CITY's agents, servants, employees, contractors or licensees acting within the scope and course of their duties, then, to the extent the damage or injury in question is caused thereby, then WTFL's liability to CITY hereunder shall be proportionately abated in accordance with Florida law.

7.3. Ownership of Improvements and Fixtures. All improvements and fixtures constructed and/ installed by WTFL shall be solely owned by WTFL during the Term of this Agreement.

7.4. Condition at End of Agreement. At the earlier of the expiration of this Agreement, WTFL shall quit the Property and surrender it to CITY in accordance with this Section 7.4. Subject to Section 10.2.15, the Property must be in good order and condition at the time of surrender thereof. At the time of surrender all landscaping shall be in a healthy and vibrant condition. All improvements and fixtures on the Property, except trade fixtures, shall become the property of CITY, free of any right, title or claim of WTFL. WTFL shall remove all personal property that belongs to WTFL, or any of WTFL'S agents, servants, employees, independent contractors or subtenants and shall repair all damage to the Property caused by such removal.

7.5. CITY Assistance with Environmental Agencies. WTFL may request CITY through its City Manager for the CITY to undertake affirmative action(s) and/ or assistance necessary to enable the Environmental permitting of the project contemplated by this Agreement, and to obtain for WTFL any available protections from Environmental liability relating to conditions at the Property existing prior to the Effective Date, including but not limited to protections under any brownfields or similar laws. The CITY shall provide reasonable non-financial support and assistance upon WTFL's request.

ARTICLE 8.

LIENS

8.1. Liens against the Property. WTFL 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 CITY in and to the real property within the Property, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the WTFL, or its agents, servants, employees, contractors or officers or on account of any act or omission of said WTFL as to CITY's right, title or interest in and to the real property within the Property. All Persons contracting with the WTFL, or furnishing materials, labor or services to said WTFL, or to its agents or servants, as well as all persons shall be bound by this provision of the Agreement. Should any such lien be filed against the real property within the Property, WTFL shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. WTFL shall not be deemed to be the agent of CITY, so as to confer upon a laborer bestowing labor upon or within the real property underlying the Property or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes, as same may be amended from time to time, or an equitable lien upon the CITY's right, title, or interest in and to the Property. These provisions shall be deemed a notice under Section 713.01 (26), Florida Statutes as well as Section 713.10(1) and (2)(b) Florida Statutes, as same may be amended from time to time, of the "non-liability" of the CITY. CITY shall cooperate with WTFL in connection with any financing transaction that is secured by WTFL's Leasehold interest in the Property. Notwithstanding, CITY shall not agree to encumber its fee simple interest or allow its interest to be foreclosed or terminated. Such cooperation agreements shall be in form and content satisfactory to CITY in its sole discretion.

ARTICLE 9.

ENTRY AND INSPECTION OF PREMISES

9.1. CITY'S Inspection and Entry Rights. CITY, or any agent thereof, shall be entitled to enter the Property during any reasonable business hours, taking into account WTFL'S operations, in order to inspect the subject premises for compliance with this Agreement.

9.2. Liability for Entry. WTFL, and any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under WTFL, or any invitees thereof shall have no claim or cause of action against CITY because of CITY'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 negligent conduct of CITY, its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

ARTICLE 10

INSURANCE AND INDEMNIFICATION

10.1. Indemnity.

10.1.1. WTFL shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including reasonable attorneys' fees or liabilities of every kind, nature or degree to the extent caused by WTFL under this Agreement, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Property, or the breach or default by WTFL of any covenant or provision of this Agreement (hereinafter, "Claims"), except for any Claim or occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees acting within the scope and course of their duties. Nothing herein shall be deemed a waiver of CITY's sovereign immunity.

10.1.2. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Property, 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 any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

10.1.3. Except to the extent a Claim arises solely out of or results from CITY's intentional torts or gross negligence, WTFL further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its 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 CITY, WTFL shall assume and defend not only itself but also the CITY in connection with any Claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's Attorney) shall retain the right to select counsel of its own choosing at its own expense.

10.2. Insurance.

Design/Construction Insurance Requirements

10.2.1. As a condition of this Agreement, WTFL shall cause its general contractor and construction manager (collectively, "CONTRACTOR") to procure and maintain prior to construction and until construction is complete, at their sole expense, insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of CONTRACTOR. CONTRACTOR shall provide the CITY a certificate of insurance evidencing such coverage. CONTRACTOR's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by CONTRACTOR shall not be interpreted as limiting WTFL's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the CITY's Risk Manager.

10.2.2. The coverages, limits, and/or endorsements required herein protect the interests of the CITY, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by WTFL or CONTRACTOR for assessing the extent or determining appropriate types and limits of coverage to protect WTFL and/or CONTRACTOR against any loss exposures,

whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by WTFL under this Agreement.

The following insurance policies and coverages are required:

10.2.3. Commercial General Liability.

- a. Coverage must be afforded under a Commercial General Liability policy with limits of:
 - i. \$2,000,000 each occurrence and \$4,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
 - ii. \$2,000,000 each occurrence and \$4,000,000 project aggregate for Products and Completed Operations
- b. Policy must include coverage for contractual liability and independent contractors.
- c. The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 10 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the CONTRACTOR. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

10.2.4. Business Automobile Liability. Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$1,000,000 combined single limit each accident. If CONTRACTOR does not own vehicles, CONTRACTOR shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

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

- a. CONTRACTORs Pollution Liability Coverage. For sudden and gradual occurrences and in an amount not less than \$2,000,000 per claim arising out of this Agreement, including but not limited to, all hazardous materials identified under the Agreement.
- b. Hazardous Waste Transportation Coverage. CONTRACTOR shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount of \$1,000,000 per claim limit and provide a valid ERA identification number.

10.2.6. Professional Liability and/or Errors and Omissions. Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate. CONTRACTOR must keep the professional liability insurance in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of work by the CITY, whichever is longer, which obligation shall survive expiration or early termination of this Agreement.

10.2.7. Property Coverage (Builder's Risk). Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- a. All Risk Coverage including Flood and Windstorm with no coinsurance clause.
- b. Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project.
- c. Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment.

This policy shall insure the interests of the CITY, WTFL and CONTRACTOR in the property against all risk of physical loss and damage and name the CITY and WTFL as Loss Payees. This insurance shall remain in effect until the work is completed and the property has been accepted by the CITY and WTFL.

10.2.8. Workers' Compensation and Employer's Liability. Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute. CONTRACTOR waives, and CONTRACTOR shall ensure that CONTRACTOR's insurance carrier waives, all subrogation rights against the CITY and the CITY's officers, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent. CONTRACTOR must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Operations/Maintenance Insurance Requirements

10.2.9. WTFL shall procure prior to occupancy and maintain during the Term of this Agreement and during any renewal or extension term of this Agreement, at its sole expense, insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of WTFL. WTFL shall provide the CITY a certificate of insurance evidencing such coverage. WTFL's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by WTFL shall not be interpreted as limiting WTFL's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the CITY's Risk Manager.

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

The following insurance policies and coverages are required:

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

- a. \$1,000,000 each occurrence and \$2,000,000 location aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury.
- b. \$1,000,000 each occurrence and \$2,000,000 location aggregate for Products and Completed Operations.

Policy must include coverage for contractual liability and independent contractors.

The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the WTFL. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

10.2.12. Liquor Liability. WTFL shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), Contractor shall provide written documentation to confirm that coverage already applies to this Agreement.

10.2.13. Business Automobile Liability. Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$1,000,000 combined single limit each accident. If WTFL does not own vehicles, WTFL 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.

10.2.14. Property Coverage. Coverage must be afforded in an amount not less than 100% of the replacement value of the property with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

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

- c. This policy shall insure the interests of CITY and WTFL in the property against all risk of physical loss and damage, and name CITY as a Loss Payee

10.2.15. Collection of Insurance. In the event of (1) destruction of or damage to over fifty percent (50%) of any of the premises, buildings, other structures or Improvements covered by insurance, and (2) WTFL's election to rebuild such premises, buildings, other structures or Improvements pursuant to WTFL's option provided in this Agreement; the funds payable for reconstruction or repair pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by CITY, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or Improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances and charter of CITY. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, and WTFL intends to reconstruct or repair, they are responsible for the difference. If WTFL does not intend to reconstruct or repair, the CITY has first right of insurance proceeds for costs of demolition and remediation. 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 WTFL. If WTFL does not intend to reconstruct or repair, WTFL must first notify the CITY of its decision and the CITY, in its sole discretion, shall have the right to require that WTFL either (i) direct the insurance company to remit any and all insurance proceeds to the CITY so CITY may use the insurance proceeds to repair or reconstruct the Improvements or (ii) use all or a portion of the actual cash value received from the insurance company to pay for costs of demolition and remediation of the Property so that the Property be delivered in its present condition. Notwithstanding the foregoing, at any time during the Term, the City, in its sole discretion, may elect to obtain its own property insurance and if the CITY receives notice from WTFL that it does not intend to reconstruct or repair, the CITY may use its own insurance proceeds to rebuild the Property.

10.2.16. Workers' Compensation and Employer's Liability. Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute. WTFL waives, and WTFL shall ensure that WTFL's insurance carrier waives, all subrogation rights against the CITY and the CITY's officers, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent. WTFL 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.

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

- a. WTFL and CONTRACTOR shall provide the CITY with valid Certificates of Insurance no later than ten (10) days prior to the start of work contemplated in this Agreement.

- b. WTFL and CONTRACTOR shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of WTFL and CONTRACTOR to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement Term goes beyond the expiration date of the insurance policy, WTFL and CONTRACTOR shall provide the CITY with an updated Certificate of Insurance prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The CITY shall be named as an Additional Insured on all required Commercial General Liability, Business Automobile Liability and Pollution Liability policies.
- g. The CITY shall be named as a Loss Payee on the Builder's Risk and Property policies as the CITY'S interests appear at the time of any loss.
- h. The CITY shall be granted a Waiver of Subrogation on WTFL and CONTRACTOR'S Workers' Compensation insurance policy.
- i. The title of the Agreement, Bid/Contract number, or other identifying reference must be listed on the Certificate of Insurance.
- j. The Certificate Holder should read as follows:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

10.2.18. WTFL and CONTRACTOR have the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, or self-insured retention; including any loss not covered because of the operation of such deductible, self-insured retention. Any costs for adding the CITY as an Additional Insured shall be at WTFL and CONTRACTOR's expense.

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

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

10.2.21. Any exclusion or provision in any insurance policy maintained by WTFL or the CONTRACTOR that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

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

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

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

10.3. Failure by WTFL to Maintain Insurance. If WTFL refuses, neglects, or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the CITY, in its sole and absolute discretion, may procure or renew any insurance at WTFL's sole expense; provided however, that nothing herein shall be deemed to be an obligation on the CITY to obtain any WTFL required insurance, including, but not limited to any insurance required for WTFL's operations. Whether the CITY elects, in its discretion, to procure or renew such insurance, the failure of WTFL to procure or renew shall be deemed an event of default under this Agreement. In that event, all sums paid by the CITY for insurance will be treated as Additional Rent and will be payable by WTFL to the CITY together with interest at the Default Rate from the date the sums were paid by the CITY to the date of reimbursement by WTFL

10.4. Waiver of Subrogation. Each of the parties, CITY and WTFL, hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance for any loss or damage to property caused by fault or negligence covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for which such party may be responsible, including any other licensees or occupants of the Property; provided however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at the time and in any event only with respect to loss or damage occurring during such time as the

releaser's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releaser to coverage thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of CITY and WTFL agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra costs shall be charged therefore, each party shall advise the other thereof and of the amount of the extra cost and the other party, at its election, may pay the same, but shall not be obligated to do so.

ARTICLE 11.

ASSIGNMENTS AND SUBLETTING

11.1. Assignment and Subletting.

11.1.1. Unless expressly authorized otherwise herein, WTFL may not assign this Agreement, or enter into any master sub-lease rights for the subject premises, to another person, corporation, company or other business entity by oral or written assignment or sublease agreement without obtaining CITY's prior written consent, which consent shall not be unreasonably withheld or delayed. The CITY Commission delegates authority to the City Manager to approve or reject assignments or sublease agreements contemplated by this Section, subject to the approval of form and sufficiency of such assignment or sublease agreements by the City Attorney.

11.1.2. WTFL shall provide CITY advance notice of any intention to sublease or assign this Agreement as set forth in subsection (a), which notice shall be in writing and shall state the terms and conditions of the sublease or assignment ("Assignment Notice"). Approval or disapproval of the assignment or sublease shall be provided by the City within ninety (90) days of receipt of the Assignment Notice.

11.1.3. As a condition to any assignment, the assignee shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement, and WTFL shall deliver to CITY promptly after execution, an executed copy of such assignment and an agreement of said compliance by each sublease or assignee.

11.1.4 Any assignment or subletting of this Agreement that does not comply with the provisions of this Article shall be void.

ARTICLE 12.

EVENT OF DEFAULT AND REMEDIES

12.1. Abandonment of Property. If WTFL abandons or vacates the Property before the end of the Term the same shall constitute a default hereunder, CITY may cancel this Agreement, subject to the notice and opportunity to cure provisions set forth in Section 12.3. On cancellation, CITY shall be entitled to peaceably enter the Property as WTFL's agent to regain or relet the Property. CITY shall incur no liability for such entry. As WTFL's agent, CITY may relet the Property with or without any improvements, fixtures or personal property that may be upon it, and the reletting may be made at such reasonable price, in such terms and for such duration as CITY determines and for which CITY receives rent. Notwithstanding the foregoing, CITY is not

obligated to relet the Property and CITY may, if it so elects, merely regain possession of the Property.

12.2. Dispossession on Default; Notice and Opportunity to Cure.

12.2.1. If WTFL defaults in the performance of any covenant or condition of this Agreement, including without limitation, failure to construct the Qualified Project or to open and operate a water taxi service, CITY may give WTFL written notice of that default with sufficient specificity to allow WTFL to identify the default. For defaults other than nonpayment of rent or additional rent, WTFL shall cure such default within twenty (20) days after written notice is given or within such greater period of time as specified in the notice; provided, however, if a greater period of time is not specified in the written notice, then the period for curing such default shall be twenty (20) days.

12.2.2. If the default (other than for nonpayment of rent or additional rent) is of such a nature that it cannot be completely cured within time specified, CITY may terminate this Agreement only if WTFL fails to proceed with reasonable diligence and in good faith to cure the default. Thereafter, if WTFL fails to proceed with reasonable diligence and in good faith to cure the default, termination of this Agreement may occur only after CITY gives not less than an additional ten (10) days' advance notice to WTFL. On the date specified in the notice, the term of this Agreement will end, and, WTFL shall quit and surrender the Property to CITY, except that WTFL will remain liable as provided under this Agreement.

12.2.3. On termination of the Agreement, CITY may peaceably re-enter the Property without notice to dispossess WTFL, any legal representative of WTFL, or any other occupant of the Property. CITY may retain possession through summary proceedings or otherwise and CITY shall then hold the Property as if this Agreement had not been made.

12.3. Damages on Default. If CITY retakes possession under Section 12.2, CITY shall have the following rights:

12.3.1 CITY shall be entitled to any expenses (including, but not limited to attorneys' fees, brokerage fees, advertising, administrative time, labor, etc.) that CITY incurs in returning the Property to good order and/or preparing it for re-rental.

12.3.2. CITY shall be entitled, but is not obligated, to re-let all or any part of the Property in CITY'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 Agreement.

12.3.3. CITY's election to not re-let all or any part of the Property shall not release or affect WTFL's liability for damages. Any suit that CITY brings to collect the amount of the deficiency will not prejudice in any way CITY's rights to collect the deficiency for any subsequent period by a similar proceeding. In putting the Property in good order or in preparing it for re-rental, CITY may alter, repair, replace, landscape or decorate any part of the Property in any way that CITY considers advisable and necessary to re-let the Property. CITY's alteration, repair, replacement, landscape or decoration will not release WTFL from liability under this Agreement.

12.3.4. CITY is not liable in any way for failure to re-let the Property, or if the Property is re-let, for failure to collect the rent under the re-letting.

12.4. Insolvency or Bankruptcy. Subject to the provisions hereof respecting severability, should WTFL 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 WTFL, or an assignment of WTFL for the benefit of creditors, or any action taken or suffered by WTFL under any insolvency, bankruptcy, or reorganization act, such action shall at CITY's option, constitute a breach and default of this Agreement by WTFL and WTFL agrees to provide adequate protection and adequate assurance of future performance to the CITY which will include, but not be limited to the following:

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

12.4.2. All obligations of the WTFL must be performed in accordance with the terms of this Agreement.

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

12.5. Condemnation. WTFL may prosecute any claim of loss or damage, and any right or claim to any part of an award that results from the exercise of eminent domain power of any governmental body, regardless of whether the loss or damage arise because of condemnation of all or part of the Property. If a partial taking or condemnation renders the Property unsuitable for WTFL's purposes under this Agreement, WTFL shall have the option to terminate this Agreement. CITY shall have the right to receive compensation from the condemning authority for the value of its fee simple real property interest in the Property.

12.6. Holding Over. WTFL will, at the termination of this Agreement, by lapse of time or otherwise, yield up immediate possession to CITY. If WTFL retains possession of the Property or any part thereof after such termination, then CITY may at its option, serve written notice upon WTFL that such holding over constitutes any one of: (i) renewal of this Agreement for one year, and from year to year thereafter, (ii) creation of a month to month tenancy, upon the terms and conditions set forth in this Agreement, or (iii) creation of a tenancy at sufferance, in any case upon the terms and conditions set forth in this Agreement. WTFL shall also pay to CITY all damages sustained by CITY resulting from a retention of possession by WTFL, including the loss of any proposed subsequent Lessee for any portion of the Property. The provisions of this Section shall not constitute a waiver by CITY of any right of re-entry as herein set forth; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to

terminate this Agreement for a breach of any of the terms, covenants or obligations herein on WTFL's part to be performed.

12.7. CITY'S Remedies. Upon the occurrence of any default by WTFL set forth in this Section, the CITY may enforce this Agreement and obtain legal or equitable relief for the Default in a court of competent jurisdiction in accordance with the venue provision contained in this Agreement.

12.8. Cumulative Remedies. CITY's remedies contained in the Agreement 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.

12.9. CITY Default.

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

12.9.2. If WTFL shall claim that a CITY default exists, then WTFL, as its sole and exclusive remedy, shall have the right to institute from time to time an action or actions (i) for specific performance, injunctive and/or other equitable relief and/or (ii) to terminate this Agreement, and in no event shall WTFL be entitled to recover damages.

ARTICLE 13.

MISCELLANEOUS

13.1. Requirement for Notice. WTFL shall give CITY prompt written notice of any accidents on, in, over, within, under and above the Property in which damage to property or injury to a person occurs.

13.2. Notices.

13.2.1. Except as provided in subparagraph 13.2.2 below, 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 Agreement, 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 mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set

forth below, or at such other address or addresses and to such other person or firm as CITY may from time to time designate by notice as herein provided.

13.2.2. All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY: City of Fort Lauderdale
Attn: City Manager
101 NE Third Avenue, Suite 2100
Fort Lauderdale, Florida 33301

With copy to: City of Fort Lauderdale
Attn: City Attorney
101 NE Third Avenue, Suite 2100
Fort Lauderdale, Florida 33301

AS TO WTFL: Water Taxi of Fort Lauderdale LLC
Attn: William Walker
366 SE 17th Street
Fort Lauderdale, Florida, 33316

With copy to: John M. Milledge, P.A.
Attn: John Milledge, Esq.
699 North Federal Highway, Suite 300
Fort Lauderdale, Florida 33304

13.3. Time Is Of The Essence. Time is of the essence as to the performance of all terms and conditions under this Agreement.

13.4. CITY'S Cumulative Rights. CITY's rights under the Agreement are cumulative, and CITY'S failure to promptly exercise any rights given under this Agreement shall not operate of forfeit any of these rights.

13.5. Modifications, Releases and Discharges. No modification, release, discharge or waiver of any provision of this Agreement will be of any effect unless it is in writing and signed by the CITY and WTFL.

13.6. Time. In computing any period of time expressed in day(s) in this Agreement, 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 or 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.

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

13.8. Survival. All obligations of WTFL hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of the Term hereof.

13.9. CITY Delays; Causes beyond Control of CITY. Whenever a period of time is herein prescribed for action to be taken by CITY, CITY 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 of any kind whatsoever which are beyond the control of CITY.

13.10. Pledge or Security Interest. In connection with any financing of the improvements, any such financing of security interest in this Agreement by WTFL, shall require the approval of the City Commission of the City of Fort Lauderdale, Florida, which approval shall not be unreasonably withheld, conditioned or delayed.

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

13.12. Successors. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

13.13. Sovereign or Qualified Immunity. Nothing herein shall constitute, or be construed as, a waiver of sovereign or qualified immunity by the CITY or as a waiver beyond the limits set forth in Florida Statute, Section 768.28, or of any defense available to the CITY as set forth in Section 768.28, Florida Statutes, or in any other provision under applicable law. Further, the sole and exclusive remedies available to WTFL against the CITY pursuant to this Agreement are strictly limited to those set forth in Section 12.9.2 and no other waiver of immunity by the CITY shall be deemed, granted or implied.

13.14. 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 Agreement. None of the parties intends to directly, or substantially, benefit a third-party by this Agreement. The parties agree that there are no third-party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any Agreement.

13.15. Non-Discrimination. WTFL shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

13.16. Records. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records, as applicable. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, to the extent Chapter 119 may be applicable to that entity. **IF WTFL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE WTFL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 1 EAST BROWARD BLVD., STE. 444, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.**

(a) WTFL shall comply with the specific requirements of public records laws:

1. Implement policies and procedures to keep and maintain all public records in accordance with the applicable laws, and regulations, including Section 119.0701, Florida Statutes.

2. Upon request from the City's custodian of public records, provide the 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 this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the WTFL does not transfer the records to the CITY.

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

13.17. 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 Agreement that are not contained in this document.

Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both parties.

13.18. 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 Agreement has been their joint effort.

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

13.20. Venue. Any controversies or legal issues arising out of this Agreement 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, WTFL expressly waives whatever other privilege to venue it may otherwise have.

13.21. Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, pandemics, accident, flood, acts of God, 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 WTFL be deemed Force Majeure.

13.22. 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.

13.23. Audit Right and Retention of Records.

13.23.1. CITY shall have the right to audit the books, records, and accounts of WTFL and WTFL'S sublessees, licensees or concessionaires that are related to the obligations of this Agreement. WTFL shall keep and WTFL shall cause WTFL'S sublessees to keep, such books, records, and account as may be necessary in order to record complete and correct entries related to the obligations under this Agreement. All books, records and accounts of WTFL and WTFL'S sublessees as to the obligations set forth above 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, WTFL

or WTFL's sublessees, as applicable shall make same available to CITY at no cost to CITY in written form.

13.23.2. WTFL and WTFL'S sublessees shall preserve and make available, at reasonable times for examination and audit by CITY in the City of Fort Lauderdale, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to the WTFL'S or WTFL'S sublessees' obligations as set forth above or the required retention period of the Florida Public Records Law, Chapter 119, Florida Statutes, as it 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 expiration or earlier termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Law is determined by CITY to be applicable to WTFL and WTFL'S sublessees' records WTFL and WTFL'S sublessees shall comply with all requirements thereof; however, WTFL and WTFL'S sublessees shall violate no confidentiality or non-disclosure requirement of either federal or state law.

13.23.3. WTFL shall, by written contract, require WTFL'S sublessees to agree to the requirements and obligation of this Paragraph 13.23.

13.23.4. WTFL shall maintain during the term of this Agreement all books of account, reports and records relating to the obligations set forth herein in accordance with its historic practice which shall not materially differ from generally accepted accounting practices and standards.

13.24. Estoppel Certificate. CITY agrees to furnish no more than 3 times a year when requested by WTFL or the holder of any deed of trust or mortgage, a certificate signed by CITY confirming and containing such factual certifications and representations as may be reasonably requested by WTFL or the holder of any deed of trust or mortgage, including without limitation:

13.24.1. that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications);

13.24.2. that there have been no defaults thereunder by CITY or WTFL (or if there have been defaults, setting forth the nature thereof); and

13.24.3. the date to which the rent and other charges have been paid, if any.

CITY shall, within twenty-five (25) days following receipt of said proposed certificate from WTFL, return a fully executed copy of said certificate to WTFL. In the event CITY shall fail to return a fully executed copy of such certificate to WTFL within the foregoing twenty-five (25) day period, then CITY shall be deemed to have approved and confirmed the terms, certifications and representations contained in the certificate sent to CITY by WTFL and any holder of a mortgage on the Property. Similarly, upon request from CITY, WTFL shall provide CITY with an estoppel certificate on the same terms and conditions as set forth above.

13.25. No Encumbrance. The CITY shall never be obligated to encumber, pledge or subordinate its fee simple interest in the Property to the lien, encumbrance or interest of WTFL or any party claiming by or through or under WTFL.

13.26. Representations and Warranties.

13.26.1. Representations by WTFL. WTFL represents and warrants, as of the Effective Date and at all times during the Term of this Agreement, as follows:

- (a) Legal Entity; Good Standing. WTFL is a limited liability company validly existing and in good standing under the laws of the State of Florida and is duly authorized to conduct business in the State of Florida.
- (b) Authority; No Limitation on Ability to Perform. WTFL is duly authorized and has the power and authority to enter into this Agreement and to carry out and perform each of its obligations under this Agreement. No provision of any charter or by-law or partnership agreement of WTFL shall in any way prohibit, limit or otherwise affect the right or power of WTFL to perform its obligations under this Agreement.
- (c) Valid Execution. The execution of this Agreement by WTFL has been duly and validly authorized by all necessary corporate action in accordance with WTFL's corporate documents, and this Agreement is a valid and binding obligation of WTFL, enforceable against WTFL in accordance with its terms.

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

- (a) Body Corporate and Politic. CITY is a validly existing Florida municipal corporation.
- (b) Valid Execution. The execution of this Agreement together with all documentation contemplated hereby, by CITY has been duly and validly authorized by CITY, and this Agreement is a valid and binding obligation of CITY, enforceable against CITY in accordance with its terms.

13.27. Acknowledgment. During the term of the Agreement, WTFL shall prominently display or acknowledge the contribution of the CITY to the establishment of the Landing terminal project located on the Property in Fort Lauderdale in a manner satisfactory to the CITY.

13.28. Leasehold Financing. WTFL may not, without CITY's consent, grant a security interest, in its leasehold interest in the Property. In addition to any restrictions or conditions imposed by the City Commission, any leasehold financing approved by the CITY will be subject to the terms set forth on **EXHIBIT F**. Nothing herein shall be construed as a right to encumber or subordinate the fee interest of the CITY in the Property, which encumbrance or subordination is prohibited by law.

13.29. Naming Rights. Subject to compliance with all governmental regulations, WTFL shall have the exclusive right to name structures or elements of the building ("Naming Rights") or on the interior or exterior of the Property in a manner that is aesthetically pleasing and in harmony with the surrounding community; provided that the name shall be related to the marine industry. If not related, the City Manager reserves the right to disapprove and thus prohibit any name for the building in its sole discretion. Any fees or payments received by WTFL in connection with the Naming Rights will be included in WTFL's Gross Sales calculation for the Rental Year in which the payment is received.

13.30. Public Benefit. The project includes the following public benefit requirements:

13.30.1. City Events/Meetings. Subject to the Blackout Days (as defined below), the CITY shall have the right to use the rooftop facility for up to twelve (12) events/functions per year (the "City Events") at no cost to the CITY. CITY shall be responsible for payment of any food, beverage, or entertainment provided for during such City Events. Water Taxi service shall be provided for the attendees of the City Event at a reduced rate equal to 50% of the standard price. The CITY shall provide WTFL with 14 days' notice prior to a City Event. Annually, the parties will prepare a list with black out days for the upcoming calendar year and the CITY agrees that no City Event or Community Event (as defined below) will be held during such days (the "Blackout Days").

13.30.2. Civic Association/Public Meeting Space. Subject to the Blackout Days, WTFL shall also make reasonable efforts to accommodate local civic associations at no-charge at the Landing rooftop facility for their meetings and/or event needs (the "Community Event"). The local civic association shall be responsible for payment of any food, beverage, or entertainment provided for during such Community Events. Water Taxi service shall be provided for the attendees of the Community Event at a reduced rate equal to 50% of the standard price. The civic associations shall provide WTFL with 14 days' notice prior to a Community Event. No Community Event will be held during the "Blackout Days".

13.30.3. Seawall Infrastructure. WTFL shall replace the existing seawall for the Parcel 504212270012 (WTFL Leasehold). WTFL shall maintain such improvements throughout the life of the agreement.

13.30.4. City Dock Spaces. WTFL shall construct, operate and maintain docks and dock slips as described in **EXHIBIT G**. WTFL shall make dock spaces available at no-charge for the City to land and launch boats from, including but not limited to the Fort Lauderdale Police Marine Unit, Fort Lauderdale Fire Rescue Marine Unit, and the City's Water Trolley Service (the "City Dock Spaces"). In no event shall access to the City Dock Spaces be impeded by WTFL use of the Property.

13.30.5. Dock Spaces. WTFL shall construct, operate and maintain the dock spaces as described in **EXHIBIT G**. WTFL shall allow the public that is visiting the Facility to use the spaces identified as daily public spaces on **EXHIBIT G** on a short term basis (not to exceed two hours) on a daily basis from 9am to 10pm at no charge to the end-user who are restaurant and/or water taxi patrons. The public spaces may also be used by the general public as an immediate drop off/pick up spot on a daily basis from 9am to 10pm at no charge to the end-user. WTFL shall

have a dockmaster on staff daily to manage such dock facilities. Dock space may not be available to the general public during major events such as the Fort Lauderdale International Boat Show, concerts at Fort Lauderdale Beach, and major City of Fort Lauderdale events. In the event of an emergency, the CITY, including but not limited to the Fort Lauderdale Police Marine Unit and Fort Lauderdale Fire Rescue Marine Unit, shall have the right to land and launch boats from the public dock spaces.

13.31. Patron Parking. Patrons and visitors to the Landing facility may park in the adjacent south beach parking lot, subject to availability, with no discount from public parking rates. The parking spaces are not reserved and WTFL parking needs shall not interfere with the closing of the parking lot at the City's sole discretion. WTFL shall also have a license to construct, operate and maintain parking for the exclusive use of the Facility, and license to operate and maintain a joint use dumpster with the Fire Station, as identified in **EXHIBIT G**. WTFL shall be responsible for all costs associated with the use of the joint use dumpster.

13.32. Fire Station Property Improvements. WTFL shall be responsible for permitting and construction of the fire station's parking area, a new dock for the fire station property, a new covered bay to house the large fire truck, and the dedicated accessway for the fire truck all as identified in **EXHIBIT G**. The design of the fire station property improvements must be approved by City prior to WTFL commencement of construction, approval of which by City shall not be unreasonably withheld. The fire station property improvements shall include the following specifications:

- **The bay for a rescue should measure approximately 18'x 40';**
- **Bay door should measure a minimum of 14' x 14';**
- **A trench drain down the center of the bay for water dripping from the truck from rain or fluid leak;**
- **The bay will include 20 A and 30 A electrical connections for the rescue;**
- **A method to address vehicle exhaust in the covered bay will be installed, such as built a in system or a system like Airvac (FS2);**
- **20' ceilings;**
- **Ceiling fans for exhaust;**
- **The bay will include lighting;**
- **The interior and exterior of the building will be painted;**
- **The bay floor and ramp to sea breeze must be able to accommodate the weight of firetruck, which is approximately 25 tons;**
- **Must be built to meet Florida building code Risk Category IV;**
- **Roof finished to allow routine walking with access from interior.**

{SIGNATURES ON THE FOLLOWING PAGES}

IN WITNESS OF THE FOREGOING, THE PARTIES HAVE SET THEIR HANDS AND SEALS TO THIS AGREEMENT.

AS TO CITY:

ATTEST:

CITY OF FORT LAUDERDALE

By: _____
David R. Soloman, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Susan Grant
Acting City Manager

Approved as to form and correctness:
Thomas J. Ansbro, City Attorney

Eric W. Abend
Senior Assistant City Attorney

IN WITNESS OF THE FOREGOING, THE PARTIES HAVE SET THEIR HANDS AND SEALS TO THIS AGREEMENT.

AS TO WTFL:

WITNESSES:

WATER TAXI OF FORT LAUDERDALE,
LLC, a Florida Limited Liability Company

Name: _____

By: _____
William Walker, Manager

Name: _____

ATTEST:

(COMPANY SEAL)

BY: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of September, 2024 by **William Walker**, as Manager of Water Taxi of Fort Lauderdale, LLC, a Florida Limited Liability Company. He is personally known to me or produced _____ as identification.

(SEAL)

NOTARY PUBLIC:

Notary Public, State of Florida
Name: _____
Commission Expires: _____
Commission Number: _____

EXHIBIT A

Legal Description

**BAHIA MAR 35-39 B PARCEL 1, THE N 142 M/L THEREOF LESS POR LYING WITHIN
R/W FOR ST ST RD A-1-A**

EXHIBIT B

Description of Qualified Project

SEE ATTACHED



SCHEMATIC
DESIGN
09/08/22

**THE LANDING WATER TAXI TERMINAL / RESTAURANT &
VISITOR CENTER**
1001 SEABREEZE BOULEVARD, FORT LAUDERDALE, FL 33316

A-0.0.11

adache
group architects

CAM 24-0600
Exhibit 4
Page 43 of 61



SCHEMATIC
DESIGN
09/08/22

THE LANDING WATER TAXI TERMINAL / RESTAURANT &
VISITOR CENTER
1001 SEABREEZE BOULEVARD, FORT LAUDERDALE, FL 33316

A-0.0.09

adache
group architects

CAM 24-0600
Exhibit 4
Page 44 of 61



SCHEMATIC
DESIGN
09/12/22

**THE LANDING WATER TAXI TERMINAL / RESTAURANT &
VISITOR CENTER**
1001 SEABREEZE BOULEVARD, FORT LAUDERDALE, FL 33316

A-0.0.12

adache
group architects

CAM 24-0600
Exhibit 4
Page 45 of 61



SCHEMATIC
DESIGN
09/08/22

THE LANDING WATER TAXI TERMINAL / RESTAURANT &
VISITOR CENTER
1001 SEABREEZE BOULEVARD, FORT LAUDERDALE, FL 33316

A-0.0.13

adache
group architects

CAM 24-0600
Exhibit 4
Page 46 of 61



SCHEMATIC
DESIGN
09/08/22

**THE LANDING WATER TAXI TERMINAL / RESTAURANT &
VISITOR CENTER**
1001 SEABREEZE BOULEVARD, FORT LAUDERDALE, FL 33316

A-0.0.10

adache
group architects

CAM 24-0600
Exhibit 4
Page 47 of 61

EXHIBIT C

Permissible Uses

The Property shall be used as a public water taxi terminal facility, restaurant, commercial and public access docks, dock master offices, event and community use space, and Accessory Uses.

EXHIBIT D
Development Budget

Description	Cost Estimate
Construction + Contingency	\$8,200,539
Furniture, Fixtures, and Equipment	\$1,024,449
Soft Costs	\$1,191,272
Total Estimated Cost	\$10,416,260*
City Obligation	\$0

***The development budget does not include contingency for Out of Budget Expenses (OBE), new project elements that may be added by the owner, or other unforeseen expenditures. Developer reserves the right to modify the development budget at their cost.**

EXHIBIT E
Development Milestones

Description	Estimated Completion
Pre-Construction & Permitting	Summer 2025
Construction & Closeout	Winter 2027
Grand Opening	Spring 2028

EXHIBIT F

LEASEHOLD MORTGAGE PROVISIONS

The terms and provisions set forth in this **Exhibit F** shall be applicable to any leasehold mortgage authorized by the CITY and executed by WTFL with respect to WTFL's leasehold interest ("Leasehold Mortgage") and the rights of the holder of the Leasehold Mortgage in connection therewith ("Leasehold Mortgagee"), are incorporated into and shall constitute a part of this Agreement and shall control in the event of any conflict with the provisions of this Agreement. Terms which are defined in this Agreement shall have the same meanings when used herein. Nothing herein shall be construed as approval by the CITY of any Leasehold Mortgage.

1. Conditions. Any assignment of WTFL's rights in and to this Agreement in connection with such Leasehold Mortgage, and to any subsequent sale or transfer of WTFL's leasehold interest as permitted in such any security instrument following a foreclosure or transfer in lieu thereof; shall be subject to the following express conditions:

9.3. The Leasehold Mortgagee must agree to assume, in writing for the benefit of CITY, all of the obligations of WTFL under this Agreement in the event that the Leasehold Mortgagee forecloses or otherwise obtains possessory interest, directly or indirectly, of WTFL's leasehold interest but only as to such obligations that first come due from and after the effective date of said foreclosure or other event of obtaining possessor interest; provided, however that any Leasehold Mortgagee, purchaser from the Leasehold Mortgagee, or any purchaser at a foreclosure sale that is not the holder of the mortgage itself or an affiliate thereof shall be obligated by the provisions of the Agreement to complete the construction of the Qualified Project and Fire Stations Improvements referred to in Section 13.32 of the Agreement (hereinafter collectively referred to as the "Initial Project"), repair, renovate or reconstruct any portion of the Initial Project or Improvements as required by the terms of the Agreement and cure any existing monetary defaults, and all non-monetary defaults capable of cure, except as otherwise provided in Section 5(a) herein; and

9.4. If the Leasehold Mortgage forecloses or otherwise obtains possessory interest, directly or indirectly, any purchaser from the Leasehold Mortgagee, or any purchaser at a foreclosure sale that is not the holder of the mortgage itself or an affiliate thereof, must engage an agent or operator with suitable experience managing similar facilities in in order to continue to operate the Initial Project as a water taxi terminal.

2. Limitations on CITY's Right to Terminate. Until all obligations of WTFL to the Leasehold Mortgagee (the "Loan Obligations") shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, CITY shall not take any action to terminate this Agreement or exercise any other remedy for default in the obligations of WTFL thereunder without first providing notice and a right to cure to the Leasehold Mortgagee as provided for under Section 5(a).

3. No Modifications. Until the Loan Obligations shall have been completely paid and performed, and the Leasehold Mortgage shall have been discharged, CITY and WTFL shall not modify this Agreement without Leasehold Mortgagee's prior written consent and the CITY shall not terminate this Agreement without providing Leasehold Mortgage notice and the right to cure as provided herein. Any such modification without Leasehold Mortgagee's prior written consent shall not be binding upon WTFL, its successors or assigns.

4. Removal of Collateral. CITY agrees that Leasehold Mortgagee shall have the right to remove from the Property any of WTFL's personal property, whenever Leasehold Mortgagee shall elect to enforce the security interests given by WTFL therein, either during the Term of this Agreement or within thirty (30) days after the expiration or the early termination thereof, or for such additional period required by the entry of any order prohibiting Leasehold Mortgagee's timely enforcement of such rights. Notwithstanding the foregoing, the Leasehold Mortgagee shall not have the right to remove any property that is required for the operation of the Initial Project for its Permitted Use.

5. Additional Leasehold Mortgagee Protection Provisions. The terms and conditions set forth below in this Paragraph shall be binding upon CITY as if fully set forth in this Agreement, and to the extent of any inconsistency between the terms and provisions contained in this Agreement and the terms and conditions set forth below in this Paragraph, the terms and conditions set forth below in this Paragraph shall govern and control:

a. Notices to Leasehold Mortgagee; Leasehold Mortgagee's Right to Cure.

(i) CITY shall send to Leasehold Mortgagee, by certified or registered mail, a true, correct and complete copy of any notice to WTFL of a default by WTFL under this Agreement at the same time as and whenever any such notice of default shall be given by CITY to WTFL, addressed to Leasehold Mortgagee at the address last furnished to CITY by such Leasehold Mortgagee. Notwithstanding the foregoing, as between WTFL and CITY, failure of CITY to provide the Leasehold Mortgagee with a copy of a default notice shall not affect the validity of the default notice to WTFL under this Agreement. WTFL irrevocably directs that CITY accept, and CITY agrees to accept, performance and compliance by Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on WTFL's part to be kept, observed or performed under this Agreement with the same force and effect as though kept, observed or performed by WTFL.

(ii) Notwithstanding anything provided to the contrary in this Agreement, this Agreement shall not be terminated because of an event of default until and unless:

(A) With respect to a monetary default, Leasehold Mortgagee has not cured such default or breach within sixty (60) days following the later of: (i) expiration of any of WTFL's notice and cure period set forth in the Lease, and (ii) the date the Leasehold Mortgagee receives written notice from the CITY of such default; and

(B) With respect to a nonmonetary default, Leasehold Mortgagee has not cured such default or breach within one-hundred and eighty (180) days following the later of: (i) expiration of any of WTFL's notice and cure periods set forth in this Agreement, and (ii) the date the Leasehold Mortgagee receives written notice from the CITY of such default, or, if such default or breach is curable but cannot be cured by Leasehold Mortgagee within such time period, (1) Leasehold Mortgagee has not notified CITY within such time period that it intends to cure such default or breach, or (2) Leasehold Mortgagee has not diligently commenced to cure such default or breach, or (3) Leasehold Mortgagee does not prosecute such cure to completion. If, however, the event of default or such noncompliance is of a nature which can only be remedied or cured by such Leasehold Mortgagee upon obtaining possession of the Premises, or portion thereof, such Leasehold Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure such event of default or noncompliance promptly and with diligence and dispatch after obtaining possession.

(iii) Promptly after Leasehold Mortgagee or a designee of Leasehold Mortgagee acquires the Property pursuant to foreclosure proceedings or otherwise or succeeds to WTFL's possessory rights or promptly after a receiver is appointed, as the case may be, Leasehold Mortgagee or its designee shall cure any event of default in the time frames set forth above. Notwithstanding anything provided to the contrary in this Agreement, Leasehold Mortgagee or a designee of Leasehold Mortgagee, its successors and/or assigns, shall not be:

(A) bound by any obligation on the part of WTFL to complete capital improvements or to provide funds for tenant allowance for improvements, except for the Initial Project; or

(B) accountable for any money deposited with WTFL for any matter, including, capital improvement reserves, except to the extent such money was actually received by Leasehold Mortgagee or its designee;

(C) liable for any indemnities of the WTFL under the Agreement for any period prior to Leasehold Mortgagee, or its designee succeeding to WTFL's interests; or

(D) liable for any act or omission of WTFL (or its members, officers, managers, employees, contractors, or agents) that occurred prior to Leasehold Mortgagee or designee of Leasehold Mortgagee becoming the lessee; provided, however, that except as otherwise expressly provided in this Agreement, Leasehold Mortgagee or a designee of Leasehold Mortgagee shall only be obligated for all obligations of the WTFL under this Agreement to be performed from and after the date the Leasehold Mortgagee or a designee of Leasehold Mortgagee succeeded to the interest of WTFL; or

(E) liable for WTFL's breach of any agreement or covenant or duty contained in this Agreement which occurred prior to the date the Leasehold Mortgagee or designee of Leasehold Mortgagee succeeded to the interest of WTFL, except for the payment of unpaid Rent which would be cured; provided, however, that except as otherwise expressly provided in this Agreement New Sublessor shall only be obligated for all obligations of the sublessor under the Sub-Lease to be performed from and after the date the New Sublessor succeeded to the interest of Sublessor under the Sub-Lease; or

(F) liable for an event of default that is not capable of being cured by Leasehold Mortgagee (such as a misrepresentation by WTFL or bankruptcy), the Leasehold Mortgagee shall not be required to cure such event of default if it acquires the Property by foreclosure or transfer in lieu thereof.

b. CITY's Consents. If the Leasehold Mortgage is approved, the CITY shall consent to, and agree that the Leasehold Mortgage may contain provisions for any or all of the following:

(i) An assignment to Leasehold Mortgagee of WTFL's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from a total or partial taking of the Property by condemnation which is not payable to CITY or needed to fulfill WTFL's obligations under this Agreement to repair or restore the Initial Project, in each event to the extent provided for, and, if provided for, in accordance with, the Lease;

(ii) The entry by Leasehold Mortgagee upon the Property, without notice to CITY or WTFL but during normal business hours, to view the state of the Property;

(iii) A default by WTFL under this Agreement being deemed to constitute a default under the Leasehold Mortgage;

(A) An assignment to the Leasehold Mortgagee of WTFL's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend this Agreement, including, without limitation, WTFL's right under Section 365(h)(1) of the Federal Bankruptcy Code to elect to treat this Agreement as terminated, and an assignment to the Leasehold Mortgagee of all of WTFL's other rights under the Federal Bankruptcy Code to the extent assignable;

(B) An assignment of any sublease to which the Leasehold Mortgage is subordinated; and

(C) Provided that at all times the Initial Project shall remain in operation in the manner set forth in this Agreement and subject to the Leasehold Mortgagee's cure periods in Section 5(a), the following rights and remedies

(among others) to be available to Leasehold Mortgagee upon the default under any Leasehold Mortgage:

- (a) The foreclosure of the Leasehold Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of the Property to the purchaser at the foreclosure sale and a subsequent sale or sublease of the Property by such purchaser so long as the purchaser is a Leasehold Mortgagee or its nominee or designee provided that such purchaser or sublessee engages an agent or operator with comparable experience managing similar facilities in order to continue to operate the Initial Project for the Permitted Uses set forth in the Lease;
- (b) The appointment of a receiver, irrespective of whether Leasehold Mortgagee accelerates the maturity of all indebtedness secured by the Leasehold Mortgage provided that such receiver has the knowledge or employs someone with substantial knowledge and experience to operate a water taxi terminal;
- (c) The right of Leasehold Mortgagee or the receiver appointed under subparagraph (B) above to enter and take possession of the Property, to manage and operate the same (provided that any operator shall have the technical experience, legal rights, and financial resources available to it, either directly or through contract, to operate WTFL's leasehold interest as contemplated in this Agreement herein and otherwise perform the terms of the Lease), to collect issues and profits therefrom and any other income generated by the Property or the operation thereof and to cure any default under the Leasehold Mortgage or any default by WTFL under the Lease; or
- (d) An assignment of WTFL's right, title and interest under this Agreement in and to any deposit of cash, securities or other property which may be held to secure the performance of the Loan Obligations, including, without limitation, the covenants, conditions and agreements contained in the Leasehold Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Leasehold Mortgagee or required by the terms of this Agreement, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Property, whether paid or to be paid.
- (e) No Leasehold Mortgage shall encumber the Property (excepting WTFL's leasehold estate in and thereto).

c. Permitted Transfers.

(i) It is acknowledged that the Leasehold Mortgage may be assigned by Leasehold Mortgagee in accordance with its terms. Notwithstanding anything stated to the contrary in this Agreement, the following transfers shall be permitted and shall not require the approval or consent of CITY:

(A) A transfer of the Property at foreclosure sale under the Leasehold Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or

(B) Any subsequent transfer by Leasehold Mortgagee or its nominee or designee if Leasehold Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.

(ii) Any such transferee shall be liable to perform the obligations of WTFL under this Agreement only so long as such transferee holds title to the Property, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations under this Agreement. The liability of any Leasehold Mortgagee that obtains title to the Property shall be limited to Leasehold Mortgagee's interest in the Property; subject, however to the following express conditions (as may be further limited by Section 5(a)(iii)):

(A) The Transferee must agree to assume, in writing for the benefit of CITY, all of the obligations of WTFL under this Agreement in the event that the Transferee forecloses or otherwise obtains possessory interest, directly or indirectly, of WTFL's leasehold interest; and

(B) If the Leasehold Mortgagee forecloses or otherwise obtains possessory interest, directly or indirectly, the Transferee, directly or through its agent, must not use the Property for any use other than a Permissible Use and will, within 180 days (subject to reasonable extension by the City if the Leasehold Mortgagee is operating in good faith to find a new operator) will continue to operate the Initial Project for its Permissible Use in accordance with the requirements contained in this Agreement.

(C) The transferee shall have the technical experience, legal rights, and financial resources available to it, either directly or through contract, to operate WTFL's leasehold interest as contemplated in this Agreement and otherwise perform the terms of this Agreement.

(ii) Following the transfer, if any, all non-curable defaults existing under this Agreement prior to such transfer shall be deemed waived without further notice or action of any party.

d. Estoppel Certificates. CITY shall execute and/or deliver to any person, firm or entity specified by WTFL (i) provided that such be the case, a certificate stating that this

Agreement is in full force and effect (including, without limitation, the terms contained in Exhibit F), that, to CITY's knowledge, WTFL is not in default under this Agreement, that this Agreement has not been modified or supplemented in any way and containing such other factual certifications concerning this Agreement (including, without limitation, the certifications contained herein and in the Lease) as such person, firm or entity may reasonably request, and (ii) copies of the documents creating or evidencing this Agreement certified by CITY as being true, correct and complete copies thereof.

e. Waiver of Subrogation. Upon written request of Leasehold Mortgagee, any policy of property insurance insuring CITY shall contain an endorsement waiving the insurer's right of subrogation as against Leasehold Mortgagee and WTFL.

f. No Fee Mortgages. CITY shall not encumber CITY's fee interest in the Property or any part thereof with a deed of trust, mortgage or other security instrument.

g. New Lease to Leasehold Mortgagee. If the Agreement is terminated because of WTFL's default thereunder or for any other reason or is extinguished for any reason (including, without limitation, rejection of the Agreement by a trustee in bankruptcy), then Leasehold Mortgagee may elect to demand a new lease of the Property (the "New Lease") by written notice to the CITY within thirty (30) days after such termination; provided however, that CITY's obligations to enter into such New Lease shall be conditioned on the approval by the appropriate governmental authorities. Upon any such election, the following provisions shall apply:

10.3. The New Lease shall be for the remainder of the Term of the Agreement, effective on the date of termination, at the same rent and shall contain the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Agreement.

10.4. The New Lease shall be executed by the CITY within ninety (90) days after receipt by the CITY of notice of Leasehold Mortgagee's or such other acquiring person's election to enter into a New Lease; provided however that CITY may elect to extend the stated ninety (90) day period in order to obtain any required Governmental Approvals or to meet any applicable Governmental Requirement.

10.5. Any New Lease and the leasehold estate created thereby shall, subject to the same conditions contained in the Agreement and in this Exhibit, continue to maintain the same priority as the Agreement with regard to any Leasehold Mortgage or any other lien, charge or encumbrance affecting the Property. Concurrently with the execution and delivery of the New Lease, the CITY shall assign to the tenant named therein all of its right, title and interest in and to moneys, if any, then held by or payable to the CITY which WTFL would have been entitled to receive but for the termination of the Agreement.

10.6. If WTFL refuses to surrender possession of the Property following such termination by the CITY, then the CITY may but shall not be obligated to, at the request of Leasehold Mortgagee or such other acquiring person, institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove WTFL. Any such action taken by the CITY at the request of Leasehold Mortgagee or

such other acquiring person shall be at Leasehold Mortgagee's or such other acquiring person's sole expense, and Leasehold Mortgagee or such other acquiring person, as applicable, shall indemnify and hold harmless the CITY from any liability in connection therewith.

10.7. The Leasehold Mortgagee or such other acquiring person shall cure all then-existing monetary defaults, and all non-monetary defaults capable of cure prior to or contemporaneously with the execution of the New Lease (or, to the extent such Non-Monetary Defaults are of such a nature to require the Leasehold Mortgagee to first be in possession of the Initial Project, then within a reasonable period of time following the execution of the New Lease, provided Leasehold Mortgagee promptly commences such cure, and thereafter prosecutes such cure with diligent, good faith efforts through completion).

6. Bankruptcy Filing by WTFL. So long as the Leasehold Mortgage shall remain outstanding, and in the event of a bankruptcy filing (voluntary or involuntary) by WTFL, then if WTFL shall reject this Agreement pursuant to Section 365(a) of the Bankruptcy Code, CITY shall have the right to collect from WTFL all expenses, fees and costs, including attorney fees through assumption or rejection, including sums incurred to assess CITY's rights and obligations during the Insolvency. CITY shall serve on Leasehold Mortgagee notice of such rejection, together with a statement of all sums at the time due under this Agreement, including all other rejection damages allowable pursuant to the Bankruptcy Code, and of all other defaults under this Agreement then known to CITY. Leasehold Mortgagee shall have the right, but not the obligation, to serve on CITY within thirty (30) days after service of the notice provided in the preceding sentence, a notice that Leasehold Mortgagee elects to (i) assume this Agreement, and (ii) cure all defaults outstanding thereunder (x) concurrently with such assumption as to defaults in the payment of money and defaults under Section 25.7 of this Agreement, and (y) within sixty (60) days after the date of such assumption as to other curable defaults, except for defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code. If Leasehold Mortgagee serves such notice of assumption, then, as between CITY and Leasehold Mortgagee (i) the rejection of this Agreement by WTFL shall not constitute a termination of this Agreement, (ii) Leasehold Mortgagee may assume the obligations of WTFL under this Agreement without any instrument or assignment of transfer from WTFL, (iii) Leasehold Mortgagee's rights under this Agreement shall be free and clear of all rights, claims and encumbrances of or in respect of WTFL, and (iv) Leasehold Mortgagee shall consummate the assumption of this Agreement and the payment of the amounts payable by it to CITY pursuant to this Section at a closing to be held at the offices of CITY (or its attorneys) within thirty (30) days after Leasehold Mortgagee shall have served the notice of assumption hereinabove provided. Upon a subsequent assignment of this Agreement by Leasehold Mortgagee in accordance with the terms of Section 24 of this Agreement, Leasehold Mortgagee shall be relieved of all obligations and liabilities arising from and after the date of such assignment.

7. Notices. Any notices to Leasehold Mortgagee shall be in writing and shall be given in accordance with the provisions of this Agreement.

8. Continued Effectiveness. The rights of Leasehold Mortgagee, and the obligations of CITY and WTFL arising hereunder shall not be affected, modified or impaired in any manner or to any extent by (a) any renewal, replacement, amendment, extension, substitution, revision, consolidation, modification or partial termination of any of the Loan Obligations; (b) the validity

or enforceability of any document evidencing or securing the Loan Obligations; (c) the release, sale, exchange or surrender, in whole or in part, of any collateral security, now or hereafter existing, for any of the Loan Obligations; (d) any exercise or nonexercise of any right, power or remedy under or in respect of the Loan Obligations; or (e) any waiver, consent, release, indulgence, extension, renewal, modification, delay or other action, inaction or omission in respect of the Loan Obligations, all whether or not any CITY shall have had notice or knowledge of any of the foregoing and whether or not it shall have consented thereto.

EXHIBIT G
SEE ATTACHED

