Memorandum

MIAMI-DADE COUNTY

Date:	December 8, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Retroactive Approval of Sublease between Westrec Equities, Inc. and Nieca 1 LLC for Restaurant Service Operation at Haulover Marine Center in Haulover Park

RCA
Agenda Item No. 4(F)

Recommendation
It is recommended that the Board adopt the attached resolution retroactively authorizing execution of a sublease agreement between Westrec Equities, Inc., (Sub-Lessor) and Nieca 1 LLC (Sub-Lessee) for the restaurant service operation at Haulover Marine Center in Haulover Park.

Scope
Haulover Park is located at 10801 Collins Avenue, in Commission District 4. It is one of six marinas managed and operated by the Miami-Dade Park and Recreation Department (MDPR) and is open to all residents and visitors of Miami-Dade County. The proposed agreement will have a County-wide impact.

Fiscal Impact/Funding Source
There is no direct fiscal impact to the County relating to this proposed agreement.

Track Record/Monitor
Westrec Equities, Inc. has operated, managed, and maintained Haulover Marine Center through a lease agreement with Miami-Dade County since May 1995 (R-409-95 attached), and provided a level of service to the County and its customers that meets or exceeds the requirements of the agreement. The remittance of monthly fees has been consistent and timely, and there have been few if any complaints documented to marina staff or administration officials.

This sublease agreement will be monitored and managed by MDPR's Contract Management Section.

Background
Haulover Marine Center provides for 265 dry rack boat storage spaces, bait, tackle and fuel dock operations, towboat and boat rental services, and a small restaurant. Since 1997, the County has authorized two amendments to the Master Lease Agreement allowing Westrec to sublease the restaurant services (R-1254-97 and R-1028-02 attached).

This lease amendment authorizes a new sublease for restaurant services substantially the same as the two previous subleases, as authorized in compliance with page 9, paragraph 33, of the Master Lease Agreement (attached). Westrec requested MDPR's approval of the sublease in March 2008. In an attempt to consolidate the sublease with a capital improvement lease amendment request from Westrec, MDPR did not immediately process the sublease for approval by the Board. It was ultimately determined that the capital improvements lease amendment would have to be considered separately resulting in the retroactive nature of this resolution.

The proposed sublease requires that the Sub-Lessee be subject to the same terms and conditions as the Master Lease with Westrec. This includes all financial reporting requirements and payment of the previously negotiated share of gross revenues (3%). In addition, the County has reserved the right to directly terminate any sub-lessee, for any cause, for which the lessee may be terminated. Further, by allowing this sublease with Nieca 1 LLC, the County does not amend, modify, or release any of the terms and conditions of the original Master Lease with Westrec Equities, Inc. The terms of the proposed sublease are as follows:

Contract Start Date:	First of the month after County approval
Contract Length:	Two years, unless extended or terminated earlier in accordance with the sublease
Payment Terms:	Basic Rent $1,250 per month due on the first day of each calendar month
	3% of monthly gross receipts from food service from $0.00 - $3,000
	5% of monthly gross receipts from food service from $3,000.01 - $5,000.00
	7% of monthly gross receipts from food service over $5,000.00

The proposed sublease has been reviewed and approved by the County Attorney's office. MDPR has reviewed the qualifications of the Sub-Lessee and found that their management team has extensive experience in the restaurant industry. A background check utilizing the Criminal Justice Information System revealed no information of an adverse nature. In compliance with Ordinance 08-07, the Sub-Lessee is required to perform a nationwide criminal background check and National Sex Offender Public Registry check by a professional screener for all restaurant staff.

Attachments

Alex Muñoz
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: January 20, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION RETROACTIVELY APPROVING THE SUBLEASE AGREEMENT BETWEEN WESTREC EQUITIES, INC., AND NIECA 1 LLC FOR THE RESTAURANT SERVICE OPERATION AT HAULOVER PARK MARINE CENTER IN HAULOVER PARK

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board retroactively approves the sublease agreement between Westrec Equities, Inc., (Sub-Lessor) and Nieca 1 LLC, (Sub-Lessee) for the restaurant service operation at Haulover Marine Center in Haulover Park, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute the sublease agreement for and on behalf of Miami-Dade County and to exercise any and all rights conferred therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Martin W. Sybblis

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SUBLEASE

between

Westrec Equities, Inc.,
a California Corporation
("Sublessor")

and

Nieca 1, LLC
A Florida Limited Liability Company
("Sublessee")

Restaurant Facility
Haulover Marine Center
Miami, Florida

SUBLEASE

1. Basic Terms.

(a) **Sublessor's Name and Address**: Westrec Equities, Inc., a California Corporation
Haulover Marine Center
15000 Collins Avenue
Miami, FL 33154
Attn: Marina Manager
Telecopy No: (305) 945-0995

With a Copy To: Westrec Equities, Inc.
c/o Westrec Properties, Inc.
16633 Ventura Boulevard
Sixth Floor
Encino, California 91436
Attn: William Anderson
Telecopy No: (818) 907-1104

(b) **Sublessee's Name and Address**: Nieca 1, LLC
c/o Alicia Velazquez
1698 N.E. 181 St.
North Miami Beach Beach, Florida 33162

(c) **Sublessee's Trade Name**: Café Azul

(d) **Premises**: Restaurant in the Marine Center Building, as depicted on Exhibit A, attached hereto, located at Haulover Marine Center, North Miami Beach, Florida, (the "Marina") and all fixtures and improvements located in such area.

(e) **Term**: Commencing on January 1, 2008 and ending on December 31, 2010, unless extended or terminated earlier in accordance with this Sublease.

(f) **Basic Rent**: $1,250/month

(g) **Concession Fee**: See Section 3.2

(h) **Security Deposit**: $7,000

(i) **Business to be conducted on Premises**: Family style restaurant

(j) **Monthly Common Area Maintenance Charge**: Waived

(k) **Utilities are to be paid by Sublessee or Sublessor as indicated**: *

Water	Sublessee	Electricity	Sublessee
Gas	Sublessee	Sewer	Sublessee
Telephone	Sublessee	Garbage	Sublessee **

* If any of the utilities which are paid by Sublessee as indicated above are not separately submetered, then Sublessor shall reasonably determine Sublessee's prorata share and bill Sublessee for its portion of utilities.

** Tenant shall pay Landlord $50/month for garbage service. Provided Landlord's garbage fees increase as a direct cause from the Restaurant's business, then Tenant's garbage service obligation shall be increased to include such additional portion.

(l) **Master Landlord**: Metropolitan Dade County Florida

(m) **Date of Sublease**: December 31, 2007

2. Premises.

2.1 Real and Personal Property. Sublessor hereby Subleases to Sublessee, and Sublessee hereby Subleases from Sublessor the Premises. Sublessee acknowledges that Sublessee has examined the Premises prior to executing this Sublease and agrees that the Premises are in acceptable working order and repair and are suitable for Sublessee's intended purpose. Sublessee accepts the Premises as is and understands that Sublessor makes no express or implied warranties of habitability, suitability, quality, condition, merchantability or fitness for any particular purpose or use concerning the Premises, and Sublessee hereby waives all such warranties. When possession of the Premises is delivered to Sublessee, the Premises shall include that certain personal property listed in Exhibit B attached hereto and by this reference incorporated herein. Sublessee shall be responsible for the maintenance or replacement of all such personal property as and when necessary as well as the purchase of any additional personal property necessary to operate Sublessee's business. Upon the termination of this Sublease, Sublessee shall deliver to Sublessor personal property comparable to that enumerated in Exhibit B.

2.2 The Master Lease. Sublessee acknowledges that Sublessor's right to occupancy and control of the Marina has been granted pursuant to a lease (the "Master Lease") from Master Landlord. All of Sublessee's rights hereunder are subject and subordinate to the provisions of the Master Lease. Sublessee has received a complete copy of and reviewed the Master Lease. Sublessor will promptly forward any future amendments to the Master Lease to Sublessee. In the event that the Master Lease shall be terminated for any reason whatsoever, this Sublease shall likewise terminate without further liability to either party. During the term of this Sublease, Sublessee does hereby expressly assume and agree, for the benefit of Sublessor and Master Landlord, to perform and comply with and be bound by each and every obligation of and restriction on Sublessor under the Master Lease, except for the payment of rent, as such obligations relate to the Premises. The obligations that Sublessee has assumed under this Section are hereinafter referred to as "Sublessee's Assumed Obligations." Sublessee shall indemnify and hold Sublessor free from and harmless and defend Sublessor against all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

3. Rent.

3.1 Basic Rent. All Basic Rent shall be payable in advance, on the first day of each calendar month during the term of this Sublease. If the first month of the Sublease is a partial calendar month, Basic Rent shall be due on the first day of the term of this Sublease for that partial month. At the beginning of each Lease year after the initial Lease year, the Basic Rent payable for that Lease year shall be the Basic Rent payable for the previous Lease year increased by the same percentage as the Consumer Price Index published immediately prior to that Lease Year shall have increased from that published immediately prior to the previous Lease year. For the purposes of this Lease, the term "Consumer Price Index" shall refer to the Consumer Price Index for all Urban Consumers - U.S. City Average (All Items) compiled by the U.S. Department of Labor - Bureau of Labor Statistics based on 1982-84 as 100. In no event shall the Basic Rent payable in any year be less than that payable during the previous year.

3.2 Concession Fees. Sublessee shall pay to Sublessor, 15 business days prior to the due date, all amounts ("Concession Fees") payable to Master Landlord under the Master Lease on account of Sublessee's operations at the Premises or otherwise pursuant to this Lease. Sublessee acknowledges that it has received, read and understands the provisions of the Master Lease. Sublessee also agrees to provide to Sublessor, promptly 15 business days before due, at Sublessee's expense, all reports and operating statements required by the Master Lease to be provided on account of its operations within the Marina or determined by Sublessor or Master Landlord to be required to confirm the amount of Concession Fees. Sublessee shall pay any penalties imposed by the Master Landlord arising as a result of Sublessee's breach of its obligations to furnish reports as required by this Section. Sublessee's Concession Fees due are:

3% of monthly gross receipts from foodservice from $0.00 to $3,000.00;
5% of monthly gross receipts from foodservice from $3,000.01 to $5,000.00;
7% of monthly gross receipts from foodservice over $5,000.00.

3.3 Reports and Audits. Sublessor shall have the right, at any time during regular business hours, upon notice to Sublessee, to inspect the books of Sublessee for purposes of verifying the accuracy of Sublessee's reports relating to any Rent based on Sublessee's operations. Sublessor shall have the right to cause an audit to be made of Sublessee's books by an independent firm of certified public accountants to be designated by Sublessor for the purpose of confirming the accuracy of the reports submitted by Sublessee. If the audit discloses an underpayment of Rent, Sublessee shall immediately pay to Sublessor the amount of the underpayment with interest at the maximum lawful rate from the date the payment should have been made, plus a late charge for late payment of Rent. Sublessor shall pay the cost of such audit except that if such audit shall disclose that the portion of Rent based on Sublessee's operations for the applicable period exceeds, by 3% or more, such Rent paid by Sublessee, Sublessee shall immediately pay all costs of or related to the audit. The occurrence of a discrepancy in the reporting of such Rent of 3% or more shall constitute a default hereunder. Sublessee acknowledges that its records are subject to audit under this Lease and the Master Lease and must retain its records in contemplation of such occurrence. Sublessee agrees for a period of seven years following the close of its fiscal year to keep at the Premises or at any location in the County where the Marina is located, full and accurate books of accounts and records relative to the transactions in the Premises in accordance with generally accepted accounting principles consistently applied. Without limiting the generality of the foregoing, the following records shall be kept by Sublessee: (a) federal and state income tax returns, (b) state and local sales tax and use tax returns, (c) copies of all sales slips or invoices, (d) bank statements and deposit receipts, (e) paid invoices for purchase of merchandise, (f) merchandising receiving and shipping records, (g) all cash disbursements, cash receipts, sales and purchases, and (h) any other financial information which Sublessor reasonably deems necessary.

3.4 Payment of Rent. Rent payments shall be delivered to Sublessor at Sublessor's address. Checks shall be made payable to the Marina. "Rent" hereunder shall include Basic Rent, Percentage Rent, if applicable, Concession Fees and as "Additional Rent," such other sums and expenses payable by Sublessee on the terms and conditions specified in this Sublease. Rent payable for any fractional portion of a month

or year at the beginning or end of the term of this Sublease shall be a like fraction of the Rent due for an entire month or year. If any Rent payment is not received within five days after it is due, Sublessee shall pay a late charge of 5% of such payment, or interest from the date Rent was due at the maximum lawful rate, whichever is greater.

4. Security Deposit. Sublessee has deposited with Sublessor the Security Deposit as security for the full performance and observance of each of Sublessee's obligations under this Sublease. If Sublessee is in default under this Sublease, Sublessor may use the whole or any part of the Security Deposit to satisfy any sum due to Sublessor or to defray any expense or damage reasonably incurred by reason of the default. In the event that all or part of the Security Deposit is so used, Sublessee shall on demand pay to Sublessor a like sum to replenish the Security Deposit. Sublessor is not a trustee of the Security Deposit and may commingle it or use it in ordinary business. No interest shall accrue on it. At the termination of this Sublease or any extension or renewal thereof, if Sublessee is not then in default, Sublessor shall return the remaining balance of the Security Deposit to Sublessee or, at Sublessor's election, to the last assignee of Sublessee's interest. If Sublessor shall transfer its interest in the Marina during the term of this Sublease, Sublessor may pay the Security Deposit to the transferee and Sublessor will then be released from all liability to Sublessee for the return of the Security Deposit.

5. Use.

(a) Sublessee shall operate on the Premises the business described in Section 1 and shall use the Premises for no other purposes without the specific consent of Sublessor, which consent may be withheld in Sublessor's sole discretion. Sublessee shall continuously and at all times actively and diligently operate its business on the Premises in a first class and reputable manner. Sublessee shall employ its best business judgment, efforts and abilities to operate its business on the Premises in an efficient and businesslike manner so as to enhance the reputation and attractiveness of the Premises and the Marina.

(b) No use shall be made or permitted to be made of the Premises, nor any act done, which may increase the existing rates of insurance upon the building within which the Premises are located, or which may cause the cancellation of any insurance policy covering said building or any portion thereof. If any act on the part of Sublessee or use of the Premises by Sublessee shall cause, directly or indirectly, an increase of Sublessor's insurance expense, said additional expense shall be paid by Sublessee to Sublessor upon demand. Such payment by Sublessee shall not limit Sublessor in the exercise of any rights or remedies. Sublessee, at its sole expense, shall comply with any and all requirements pertaining to the use of the Premises, or of any insurance organization or company, which compliance may be necessary for maintenance of reasonable fire, extended coverage, public liability and other insurance upon the building and the appurtenances thereto.

(c) Sublessee shall not commit, or suffer to be committed, any waste or nuisance upon the Premises.

(d) Sublessee shall keep the Premises open for business from a minimum of eight hours per day, which includes lunch time, seven days each week or such other hours as Sublessor and Sublessee may mutually agree.

(e) Sublessee shall not vacate or abandon the Premises at any time during the term of this Sublease. If Sublessee shall abandon, vacate or surrender the Premises, or be dispossessed therefrom by process of law or otherwise, any personal property belonging to Sublessee and left in or upon the Premises shall be deemed abandoned at the option of Sublessor.

(f) Sublessee shall not post or erect any signs at the Premises or elsewhere in the Marina without Sublessor's prior written consent.

6. Compliance with Laws/Hazardous Materials.

6.1 Compliance with Laws. Sublessee shall, at Sublessee's cost and expense, cause the Premises to be used in accordance with all: (a) laws, ordinances, codes, licenses, permits, orders, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency ("Laws") applicable to Sublessee or the Premises, including without limitation, all applicable Laws pertaining to air, water and upland runoff/stormwater quality, fuel storage tanks, Hazardous Materials (as defined below), air emissions and other environmental matters ("Environmental Laws"), all zoning and other land use matters and the Americans with Disabilities Act; (b) similar applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (c) policies of insurance at any time in force with respect to the Premises; and (d) the Marina rules. If Sublessee receives any notice that Sublessee or the Premises is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Sublessee will promptly furnish a copy of such notice to Sublessor.

6.2 Hazardous Materials Upon Premises Prohibited; Indemnity Sublessee shall not have or allow any Hazardous Materials upon, about or beneath the Premises or the Marina, except (i) small quantities of Hazardous Materials commonly used in normal office operations or for premises cleaning and maintenance and used for those purposes by Sublessee and (ii) boat fuel, oils and other fluids contained in the boat in-use fuel tank, engine or other mechanical system. In no event shall Sublessee install, cause or allow any underground or aboveground storage tank or any condition at the Premises that requires a hazardous waste treatment, storage or disposal permit under the federal Resource Conservation and Recovery Act, 42 U.S.C. § § 6901 et seq., or any analogous state or local law. Without limiting the provisions of Section 21.6, Sublessee shall indemnify, defend and hold Sublessor and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company or person harmless from and against any and all Environmental Damages (as defined below). Sublessee's obligation under this Section shall survive the expiration or termination of this Sublease.

6.3 Definitions.

(1) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of a claim, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of (i) any Hazardous Material that comes to be present at or is disposed or of released at or from the Premises during the term of this Sublease, (ii) any Hazardous Material that comes to be present or is disposed of or released at or from the Marina due to Sublessee's action or inaction, or (iii) the breach of any provision of Section 6 of this Sublease involving Hazardous Material or Environmental Laws, including without limitation lost profits, consequential damages (foreseeable or unforeseeable), diminution of property value, claims brought by or on behalf of employees of Sublessee (with respect to which Sublessee waives any immunity to which it may be entitled under any industrial or worker's compensation laws, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or breach of Section 6 as required by law and as necessary to make full economic use of or restore the full economic value of the Premises or any other affected property or otherwise expended in connection with such conditions.

(2) "Hazardous Material" means any substance (i) which is or becomes defined as "hazardous" under any federal, state or local Law, (ii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is or becomes regulated as such by any federal, state or local governmental authority, (iii) the presence of which requires investigation or remediation under any federal, state or local law, (iv) which causes or threatens to cause a nuisance upon or waste to the Premises, the Marina or adjacent properties or threatens to pose a hazard to the health or safety of persons on or about the Marina, or (v) without limitation contains gasoline, oil, diesel fuel or other petroleum products, asbestos or polychlorinated biphenyls (PCB's).

6.4 Obligation to Remediate. Notwithstanding the obligation of Sublessee to indemnify Sublessor pursuant to this Sublease, at Sublessor's option Sublessee shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Sublessee shall take all actions necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. All such work shall be performed by one or more contractors, selected by Sublessee and approved in advance and in writing by Sublessor. Sublessee shall proceed continuously and diligently with such actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Premises and any other affected area. Sublessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Sublessee shall promptly provide to Sublessor copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Sublessee shall permanently seal or cap all monitoring wells and test holes to industrial standards in compliance with applicable federal, state and local laws and regulations or such more stringent specifications as may be necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, remove all associated equipment, and restore the Premises and any other affected area to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder. Within 10 days of demand therefor, Sublessee shall provide Sublessor with a bond, letter of credit or similar financial assurance evidencing that the necessary funds are available to perform the obligations established by this paragraph.

7. Personnel. All personnel employed by Sublessee shall be clean, neat, courteous and responsive to the needs of boat owners and other customers at all times. Sublessee's employees shall park their personal vehicles only in areas designated by Sublessor. Failure of Sublessee's personnel to comply with the foregoing shall constitute a default hereunder.

8. Alterations. Sublessee shall not make nor suffer to be made any alterations, additions or improvements to or of the Premises or any part thereof without the written consent of Sublessor and Master Landlord.

9. Liens. The interest of Sublessor in the Premises shall not be subject to liens for improvements made by Sublessee. Sublessee will not permit to remain and will promptly discharge, at its cost and expense, all liens, encumbrances and charges upon the Premises or any part thereof. Sublessor shall have and is hereby given authority to enter upon the Premises at any time to post any notices which, in its opinion, shall be necessary to hold Sublessor harmless from any claim or liability arising out of any work done on the Premises. Sublessor may require Sublessee to execute and cause to be recorded a memorandum of this Sublease or such other documents as Sublessor may determine to be necessary to effect such purposes. If Sublessee shall fail to discharge such liens as aforesaid, then, in addition to any other right or remedy of Sublessor, Sublessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien, by depositing in court or by giving security or in such other manner as is or may be prescribed by law. Any amounts paid by Sublessor for any of the aforesaid purposes and all reasonable expenses of Sublessor, including counsel fees, with interest thereon at rate of the lesser of 12% per annum or the maximum rate allowed under the law, from the date of payment, shall be repaid by Sublessee to Sublessor on demand and if unpaid, may be treated as Additional Rent.

10. Assignment and Subletting. Sublessee shall not sublet, assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease or any interest therein, without the prior written consent of Sublessor, which Sublessor may give in its sole discretion, and, if required by the Master Lease of Master Landlord. A change in the control of Sublessee shall constitute a transfer for purposes of this Sublease. A consent to one

assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Any such assignment or subletting without such consent shall be void, and shall, at the option of Sublessor, terminate this Sublease. In any event, Sublessor's consent to any assignment or subletting shall not relieve Sublessee from any obligation under this Sublease. In the event of default of any assignee of Sublessee in the performance of any of the terms hereof, Sublessor may proceed directly against Sublessee without the necessity of exhausting remedies against such assignee.

11. Maintenance. Sublessor shall maintain the structural soundness of the Premises, which portions are limited to foundation, exterior walls and roofs. Sublessee shall, at Sublessee's sole cost and expense, maintain all other portions of the Premises and every part thereof in good, neat and sanitary condition and repair, at all times free from trash and rubbish. Sublessee shall repair all damage to the Premises resulting from use and wear by Sublessee. Sublessee shall be responsible for the repair or replacement of any broken windows or doors and shall maintain and repair all equipment within the Premises, all heating, ventilating and air conditioning equipment and all electrical facilities within the Premises. All repairs and replacements made by Sublessee under this Section or the Section entitled "Damage to Premises" shall be made under the supervision and with the approval of Sublessor, and shall be of a quality equal to the original work. At the reasonable request of Sublessor, Sublessee, at Sublessee's expense, shall remedy any condition on the Premises not in keeping with the pleasing appearance of the Marina. Sublessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Sublessee the right to make repairs at Sublessor's expense or would terminate this Sublease due to Sublessor's failure to keep the Premises in good order, condition and repair. If Sublessee fails to perform its obligations under this Section or the Section entitled "Damage to Premises," Sublessor may, at its option (but shall not be required to), enter upon the Premises, after five days' prior written notice to Sublessee, and put the same in good order, condition and repair and the cost thereof together with interest at the maximum lawful rate shall become due and payable as Additional Rent to Sublessor upon its demand.

12. Taxes. Sublessee shall pay, ten days prior to delinquency, all taxes, assessments, license fees and public charges levied for or during the term of this Sublease against or on Sublessee's business operations, trade fixtures, leasehold improvements, merchandise or any personal property in possession of Sublessee, or installed by or for Sublessee, in, upon or about the Premises and for any real property taxes assessed with respect to the Premises. Such obligation is assumed by Sublessee whether such assessment is made against Sublessee in the first instance or is made against Sublessor. If the Premises are not separately assessed by the local assessing authority, then Sublessor shall allocate the real property taxes between the various elements of the Marina or the Premises on an equitable basis. Sublessee shall pay and hold Sublessor harmless from all sales taxes payable on account of this Sublease and Sublessee's sales made pursuant to this Sublease.

13. Surrender Upon Expiration or Termination. Sublessee shall, upon the expiration or earlier termination of this Sublease for any reason as provided herein, immediately and without notice from Sublessor, surrender and deliver up the Premises in such condition as may be consistent with the performance of all the Sublessee's obligations in this Sublease and shall deliver all keys to Sublessor. Unless Sublessor requires their removal, all alterations, improvements, additions and fixtures upon the Premises shall be the property of Sublessor upon the expiration or earlier termination of this Sublease.

14. No Abatement. No abatement of Rent or other compensation shall be claimed or allowed for loss, inconvenience or discomfort arising from the making of repairs, alterations or improvements to any areas within the Marina, including the Premises.

15. No Representations. Sublessee hereby specifically covenants that all of the terms of this Sublease have been fully and completely set forth herein and no promises or representations have been made by Sublessor or any of its agents or representatives except as specifically set forth herein. No surrender of this Sublease on Sublessee's part, and no modification or waiver by Sublessor of any of the terms hereof, shall be binding upon Sublessor unless in writing signed by a general partner of Sublessor.

16. Holding Over. If, with Sublessor's consent, Sublessee holds possession of the Premises after the termination or expiration of this Sublease, Sublessee shall become a Sublessee from month to month on the same terms and conditions contained herein except that Basic Rent shall be increased by 12%.

17. Entry by Sublessor. Sublessor and its authorized partners and employees shall be permitted during the term of this Sublease to visit and inspect the Premises during normal business hours. Sublessor shall not enter the Premises without cause and prior notice to Sublessee outside of normal working hours. However, in the event of an emergency requiring immediate admission, if Sublessee shall not be personally present to open and permit an entry into the Premises, Sublessor or its agents may forcibly enter the same without rendering Sublessor or such agents liable to any claim or cause of action for damages by reason thereof and without in any manner affecting the obligations and covenants of this Sublease.

18. Default by Sublessee; Remedies.

18.1 Default. The following shall constitute a default by Sublessee under this Sublease:

(i) Any failure to pay Rent when due.

(ii) Any failure to perform the services and obligations agreed to be performed by Sublessee pursuant to the Section entitled "Use," if such failure is not cured within ten days after notice from Sublessor as to such failure.

(iii) Any breach of any other covenant or agreement of Sublessee contained herein where Sublessee does not commence and proceed diligently to cure such breach within 30 days after notice from Sublessor as to such breach.

(iv) Any abandonment of the Premises by Sublessee.

(v) The filing by Sublessee of a voluntary petition in bankruptcy, or the adjudication of Sublessee as bankrupt or insolvent, or the filing by Sublessee of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition or similar

relief under any present or future federal, state or other law or regulation relating to bankruptcy or insolvency or a general assignment by Sublessee for the benefit of creditors.

Sublessor may, at its option (but shall not be required to), cure any default by Sublessee and any costs incurred by Sublessor in so doing, together with interest at the maximum lawful rate, shall become due and payable as Additional Rent to Sublessor upon demand.

18.2 Remedies. In the event of any default or breach by Sublessee, Sublessor may at any time thereafter, in Sublessor's sole discretion, with or without notice or demand and without limiting Sublessor in the exercise of a right or remedy which Sublessor may have by reason of such default or breach do any one or more of the following:

(i) Terminate Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Premises to Sublessor. In such event, Sublessor shall be entitled to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges and adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Sublessee proves could be reasonably avoided, and that portion of any leasing commission paid by Sublessor and applicable to the unexpired term of this Sublease. Unpaid installments of Rent or other sums shall bear interest from the date due at the maximum legal rate.

(ii) Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Premises. In such event, Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover the Rent and any other charges and adjustments as may become due hereunder.

(iii) pursue any other legal remedy now or hereafter available to Sublessor under the laws of judicial decisions of the State of Florida.

19. Damage to Premises.

19.1 Damage to Structure of Premises. If the structure of the Premises, i.e. roof, foundation or exterior walls, shall be partially damaged by fire, storm or other casualty, repair shall be made by Sublessor with reasonable dispatch. In the event of the substantially total destruction of the structure of the Premises by fire or otherwise, or if the damage shall be so extensive that it cannot, in the opinion of Sublessor, be repaired within three months from the date of such damage, then at Sublessor's option the Rent shall be paid only up to the time of such destruction or damage and this Sublease and the term thereof shall thereupon cease, except that Sublessee shall be and continue to be liable for any destruction or damage caused or permitted by Sublessee. Notwithstanding the other provisions of this Section, Sublessor shall not be obligated to incur any repair or reconstruction expense for the structure of the Premises in excess of the proceeds of any insurance policy maintained by Sublessor payable to Sublessor for such expense. Sublessor shall have no obligation to repair or rebuild any of Sublessee's fixtures, equipment, tenant improvements or personal property and Sublessor shall not be liable for any loss or damage to any such property suffered by Sublessee. Notwithstanding the provisions of the Section entitled "Maintenance" and this Section, Sublessee shall pay the cost of repair and replacement due to damage or injury done to the structure of the Premiscs by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees. Sublessee shall pay such amount to Sublessor upon demand as Additional Rent, plus interest at the maximum lawful rate from demand until payment.

19.2 Nonstructural Damage to Premises. In the event that the Premises (other than the roof, foundation or exterior walls), or any of Sublessee's fixtures, equipment, tenant improvements or personal property are damaged or destroyed, Sublessee shall, at its sole expense, repair or replace such damage or destruction as soon as reasonably possible and this Sublease shall continue in full force and effect. Sublessee waives the benefit of any law which provides that a lease terminates upon the destruction of the thing which is leased.

20. Waiver of Claims. Sublessor shall not be liable to Sublessee and Sublessee hereby waives all claims against Sublessor for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever other than resulting from the willful misconduct or negligence of Sublessor or its employees.

21. Insurance.

21.1 Liability Insurance. Sublessee shall, at its sole expense, obtain and keep in force and effect a policy of combined single limit, bodily injury and property damage insurance against any liability arising out of the conduct of Sublessee's business and the ownership, use, occupancy or maintenance of the Premises, all areas appurtenant thereto, and the Marina. The policy shall insure performance by Sublessee of the indemnity provisions of this Sublease and shall include premises/operations, product liability, liquor liability, independent contractors and personal injury liability coverages. Such insurance shall be a combined single limit policy in an amount not less than $1,000,000. Metropolitan Dade County must be included as additional insured with respect to this coverage.

21.2 Property Insurance. Sublessee shall, at its sole expense, obtain and keep in force during the term of this Sublease, a policy of insurance covering loss or damage to: (i) the Premises (other than the structure of the Premises, i.e., roof, foundation or exterior walls) unless such loss or damage is caused by the negligence or willful misconduct of Sublessor or Sublessor's agents, employees, contractors, licensees or invitees; (ii) the structure of the Premises, if such loss or damage is caused by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees; and (iii) Sublessee's fixtures, equipment, tenant improvements and personal property on the Premises against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage. Such policy shall be in the amount and on the terms reasonably required by Sublessor.

21.3 Workers' Compensation and Employer's Liability. Sublessee shall maintain workers' compensation insurance for all of Sublessee's employees who work on the Premises in compliance with state regulations. Workers' compensation insurance shall include Longshoreman Harbor Workers Act coverage and maritime law coverage. Sublessee shall maintain employer's liability insurance in an amount that is the greater of $100,000 or the amount required by applicable statutes.

21.4 Insurance Policies. The insurance required hereunder shall be procured from a responsible insurance company or companies authorized to do business in the State where the Marina is located and satisfactory to Sublessor. Each policy shall name Sublessor, Master Landlord, Westrec Marina Management, Inc. and any lenders holding mortgages on Sublessor's interest in the Marina as additional insureds and shall include loss payable clauses satisfactory to Sublessor. Each policy shall state that the insurance is primary over any insurance carried by Sublessor. Sublessee shall deliver to Sublessor the originals or certificates of all insurance policies required to be carried by Sublessee pursuant to this Section at least 30 days prior to: (i) the beginning of the initial Sublease term; and (ii) the expiration of any policy or policies being replaced during the term of the Sublease, together with evidence that the premiums therefore have been paid. All policies shall contain an endorsement prohibiting cancellation of coverage, reduction in coverage or any other modification except after 15 days prior written notice to all parties in interest.

21.5 Waiver of Subrogation. Sublessor and Sublessee each hereby waive any and all rights for recovery against the other or against the officers, employees, agents and representatives of the other for loss of or damage to such waiving party's property or the property of others under its control to the extent that such loss or damage is insured under any insurance policy in force at the time of such loss or damage. Sublessee shall, upon obtaining the policies and insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease.

21.6 Indemnity. Sublessee shall indemnify and hold each of Sublessor, all persons and companies affiliated with Sublessor, and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company or person (the "Indemnitee") harmless from and against all cost, loss, expense, suits, judgements, claims or liability (including attorneys' fees) (collectively, the "Claims") arising from Sublessee's use of the Premises and/or the Marina and from the conduct of Sublessee's business or from any activity, work or thing done, permitted or suffered by Sublessee in or about the Premises and/or the Marina or elsewhere and from any breach or default in the performance of any obligation on Sublessee's part to be performed under the terms of this Sublease (including Sublessee's noncompliance with any laws, as provided in Section 6), except to the extent the Claim arises from the willful misconduct or negligence of the Indemnitee. If any action or proceeding is brought against the Indemnitee by reason of any such Claim, Sublessee shall, upon notice from the Indemnitee, defend the same at Sublessee's expense by counsel satisfactory to the Indemnitee. This Section shall survive termination of this Sublease.

21.7 Insurance Required by Master Lease. If the Master Lease requires any insurance to be maintained with respect to the Premises in addition to the policies required above, Sublessee shall maintain such insurance.

22. Sublessor's Liability. Sublessee shall look solely to the estate of Sublessor in the Marina, subject to the rights of any mortgagee in respect of the Marina, for the collection or satisfaction of any judgment or other judicial process requiring the payment of money by Sublessor in the event of any default by Sublessor under this Sublease or any breach by Sublessor of any duties relating to this Sublease or the Premises; and no other property of Sublessor shall be subject to levy, execution or other procedures for the satisfaction of Sublessee's remedies.

23. Eminent Domain. In the event all or any part of the Premises are taken by reason of any exercise of the power of eminent domain, whether by a condemnation proceeding or otherwise, then this Sublease shall terminate as of the date of such taking or transfer. Sublessor shall be entitled to all awards and to all purchase monies attributable to the Premises, except as to any part of the award attributable to the improvements installed in the Premises at Sublessee's cost, which said part shall be payable to Sublessee.

24. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Sublease, the prevailing party shall be entitled to recover, for the reasonable fees of its attorneys in such action or proceeding. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations therewith, whether or not a legal action is subsequently commenced in connection with such default.

25. Waiver. The failure of Sublessor to insist in any one or more instances upon strict performance of any of the covenants of this Sublease shall not be construed as a waiver or relinquishment for the future of such covenant, rule or regulation, but the same shall continue and remain in full force and effect. The receipt by Sublessor of Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Sublessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Sublessor. Even though Sublessor shall consent to an assignment hereof, no further assignment shall be made without express consent in writing by Sublessor. The delivery of keys to the Sublease Premises to any officer or employee of Sublessor or to Sublessor's agent shall not operate as a termination of this Sublease or as a surrender of the Premises.

26. Notices. Communications relating to this Sublease shall be in writing and shall be delivered personally, sent by United States mail, first class postage prepaid, by telecopy, or by private messenger or courier service, to the parties or their assignees at the addresses as set forth in Section 1. A party may change these addresses by written notice to the other delivered in accordance with this Section. If a communication is mailed under this provision, it shall be deemed received on the earlier of: (i) five business days after it is mailed; or (ii) the date it is actually received. A communication by any other method permitted under this Section shall be effective when actually received.

27. Successors and Assigns. This Sublease and every provision hereof shall bind, apply to and run in favor of Sublessor, its successors and assigns, and of Sublessee and the successors and assigns of Sublessee. The term "Sublessor" as used herein shall mean only the

owner or owners at the time in question of the interest in the Premises which Sublessor currently holds and in the event of any transfer of such interest, Sublessor herein named (and in case of any subsequent transfers the then transferor) shall be relieved from and after the date of such transfer of all liability with respect to Sublessor's obligations thereafter to be performed. The obligations contained in this Sublease to be performed by Sublessor shall be binding on Sublessor's successors and assigns only during their respective periods of ownership.

28. Estoppel Certificate. Sublessee shall at any time upon not less than ten days' prior written notice from Sublessor execute, acknowledge and deliver to Sublessor a statement in writing: (i) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect) and the date to which Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Sublessee's knowledge, any uncured defaults on the part of Sublessor hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of the Premises. At Sublessor's option, Sublessee's failure to deliver such statement within such time shall be material breach of this Sublease or shall be conclusive upon Sublessee: (i) that this Sublease is in full force and effect, without any modification except as may be represented by Sublessor; (ii) that there are no uncured defaults in Sublessor's performance; and (iii) that not more than one month's Rent has been paid in advance.

29. Subordination. Sublessee agrees that this Sublease, at Sublessor's option, shall be subordinated to any mortgage or deed of trust, whether presently encumbering the Premises, or which may hereafter be placed on the Premises, and to any advances to be made thereunder, any interest thereon and all renewals, replacements and extensions thereof, provided that such mortgagees or beneficiaries first request such subordination and thereafter agree in writing to recognize this Sublease in the event of foreclosure and for so long as Sublessee is not in default. Sublessee shall execute and deliver, without cost to Sublessor, whatever instruments may be required to effect such subordination, including an agreement to attorn to any mortgagee or beneficiary under any deed of trust or any purchaser at a foreclosure sale or any transferee by deed in lieu of foreclosure.

30. Sublessor's Assignment. Sublessor shall have the right to assign all or any portion of its rights under this Sublease to any other entity. If Sublessor so assigns its rights under this Sublease, such assignee shall become Sublessor hereunder.

31. Joinder. Sublessee agrees that, upon written request from Sublessor, Sublessee will promptly join in all applications for permits, licenses or other authorizations required by any governmental agencies or other body claiming jurisdiction in connection with any work which Sublessor may desire to undertake.

32. Miscellaneous. This Sublease is governed by the laws of the state in which the Marina is located and any question arising hereunder shall be construed or determined according to such law. Headings at the beginning of each numbered Section of this Sublease are solely for the convenience of the parties and are not a part of this Sublease. Time is of the essence of this Sublease. If any provision of this Sublease is or is held to be invalid or unenforceable, then to the extent possible all of the remaining provisions of this Sublease shall remain in full force and effect and shall be fully binding upon the parties hereto. Any modification to this Sublease must be in writing and must be consented to by Master Landlord. This Sublease is the entire agreement of the parties and supersedes all prior agreements, negotiations or understandings between the two parties with respect to the subject matter of this Sublease.

33. Sublessee's Business Conduct. Sublessor considers the manner in which Sublessee's conduct of business to be important considerations for this Sublease. The cleanliness of both the interior and exterior of the Premises shall be such that Sublessor and Sublessor's customers are confident that the Premises are being maintained in a healthful, eye pleasing manner. Any condition which exists that exhibits otherwise will be brought to Sublessee's attention in writing and must be corrected within 72 hours. Sublessee shall operate its business in a manner that is compatible with and shall not interfere with Sublessor's and Sublessor's customer's quiet enjoyment of the Marina and the family atmosphere of the Marina. The Premises shall operate as a family eating establishment where families with children are comfortable.

34. Outside Deck. Sublessee may have nonexclusive use of the outside deck surrounding the restaurant ("Outside Deck") to provide food service to Sublessee's customers as depicted on Exhibit A. Sublessor and its customers shall have the same access and use of the Outside Deck. Sublessee's use of the Outside Deck shall not restrict Sublessor's use, pedestrian access, or in any way obstruct traffic flow to all areas of the Marina.

35. Radon Disclosure. In accordance with Section 404.056, Florida Statutes, Landlord hereby notifies Tenant as follows: 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; and additional information regarding radon and radon testing may be obtained from the applicable county public health unit.

36. Lease Renewal. Provided no default has occurred under this Lease, both Landlord and Tenant shall negotiate in good faith in an effort to agree on terms and conditions which are mutually acceptable for an additional term.

37. Prior Sublessee. Tenant acknowledges that there is currently a sublease in effect with a different sublessee. This Sublease shall be contingent on and shall not be effective until 1) execution of this Sublease by Sublessor, and 2) the termination of the existing sublease for the Premises. Sublessor makes no representation or warranty regarding the pre-existing Sublease, or whether any such termination can or will be obtained. Sublessor will not be responsible for any loss, liability, damage, expense or claim in the event such termination is not obtained and Sublessee hereby waives any such claim.

38. Alcohol Sales. The Premises is utilized as a family style restaurant, as such, at no time shall liquor beverages exceed 30% of total revenue. Tenant shall not sell packaged alcohol beverages.

39. Approval of Sublease. Notwithstanding any other provision of this Sublease, Sublessee acknowledges that this Sublease is subject to the approval and consent of Master Landlord. Sublessee acknowledges that receiving Master Landlord's approval may take months and provided Sublessee takes possession of the Premises, this Sublease shall be in full force and effect during the approval process. If such approval is not obtained, this Sublease shall be effective up to the day of such notice from Master Landlord and shall immediately terminate (except for those provisions hereof that expressly survive termination). In the event the Master Landlord approves this Sublease, requiring a material change(s), then either party shall have the right to terminate this Sublease, but only within 10 days of being notified of the intended change(s).

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Sublease as of the date below their signature below, to be effective as of the date set forth at the beginning of this Sublease.

"SUBLESSOR"

WESTREC EQUITIES, INC.,
A California Corporation

By: _____
Jeffrey K. Ellis, Vice President

Date: 1-25-2008

"SUBLESSEE"

Jorge Sands 01/10/08
Nieca 1, LLC Date

The undersigned hereby consents to this Sublease.

In consenting to this Lease, Landlord does not amend, modify, release or waive any of the terms and conditions of the original Lease. In the event of any conflict between the original Lease and this sublease, the terms of the original Lease shall govern.

"MASTER LANDLORD"

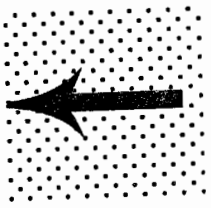
_____

By: _____

Name: _____

Title: _____

Date: _____



PREMISES

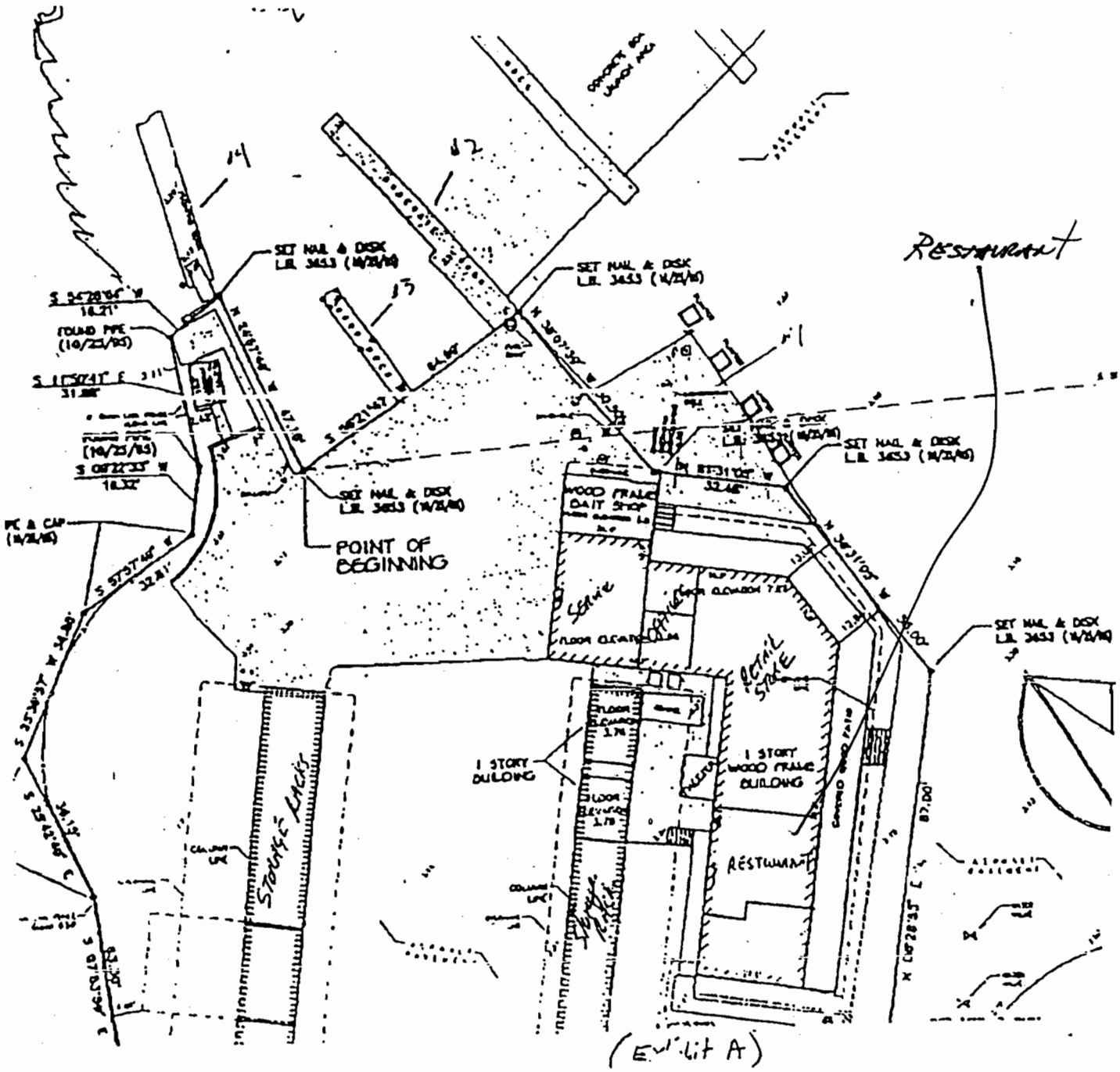


Exhibit A

Personal Property List

1	McCray Commercial Refrig/Freezer	serial # 87368227 model # SC-CDS-35-8	
1	Hobart Slicer Machine	serial # 56-851-730-LH	model # 1612
1	Coca Cola Dispensing Machine	serial # J9511K07093	model # CB23235L6
	Coca Cola Ice Machine	serial # ZS 1111116S	item code # 42233
1	Bunn O Matic Coffee Maker	serial # STF0027965	model # STF-15
1	Espresso Comobar Machine	serial # 12286	model # XL
1	Cappuccino machine	serial # 3270	model # APV1
1	Bunn O Matic Iced Tea Machine	serial # T000004388	model # T3-20230-0000
1	Crystal Tips Ice Maker Machine	serial # 132356-01M	model # BRS-725
1	Fogel R-22 Refrigerant	serial # PR-43311-943	model # CR-25-US
1	TMC True Freezer	serial # 11486118 model # TWT-48F	
1	Panasonic Microwave	serial # AW230702372	model # NN-5462A
1	Eagle Food Service Triple Steamer	serial # 9511100186	model # DHT3-120
1	TMC True Refrigerator and Lunch Setup Top	serial # 11400244 model # TSSU-48-12	
1	Eagle Wyatt Grill Machine (Charcoal)		
1	Vulcan Grill, Stove and Oven		
1	Vulcan Deep Fryer (2)	serial # 481099731 model # FF3	
1	Electromaster	serial # 1547	model # SAS
1	Eagle Table under Electromaster		
1	Triple Sink - Drop In		
1	Banner Equipment / Draft Beer Dispenser	- Budweiser and Bud Light	
1	Light Warmer from American Permanent Ware	serial # 9410-119 model # DW-12	
1	Detecto Weight Machine	serial # 9001-25D model # PC-30A	
1	NEC Video Recorder/Player	serial # C9Y00871	
1	Trackersat Descramber	serial # 114329A	
1	60 inch RCA Television	serial # 7460396AZ	
3	17 inch Zenith Televisions	serial #'s 922-14490077, 925-18630133, 941-18632177	
1	Range Hood and Exhaust Fan		
1	Scott Paper Towel Dispenser		
1	Sani Fresh Hand Soap Dispenser		
1	Sanitation Sink		
1	Storage Shelves (7)		
1	Desk with Drawer		
1	Desk (no Drawer)		
1	Keter Plastic Storage Shelf		
1	Pyro-Chem Fire Extinguisher		
1	Amerex Fire Extinguisher		
3	Sysco Aluminum Spatulas		
1	Set of 4 Sysco Sauce Pots		
1	Set of 4 Sysco Fry Pans		
1	Proctor Silex Toaster		
1	Set of 9 Super Pans		
1	Set of 2 Stowaway Containers		
1	12 inch Stainless Steel Strainer		
2	14 inch Stainless Steel Strainer with Base		
1	Stainless Steel 3 part Component Containers		
1	Set of 3 18x12 inch Super Pans		
1	Set of 3 Glass Cake Tray		
1	16 inch Stainless Steel Strainer with Base		
1	1 Speed Bar Blender with two tops		
4	Royal Cup Coffee Maker Mugs		

Exhibit B

PERSONAL GUARANTY

The undersigned, Jorge Sanchez, absolutely and unconditionally guarantees payment of the obligations of Nieca 1, LLC, a Florida Limited Liability Company, under that certain Lease dated November 20, 2007, between Nieca 1, LLC, ("Tenant") and Westrec Equities, Inc., ("Landlord"). The undersigned agrees to pay all expenses, including attorneys' fees, of enforcing this guaranty. Landlord may, without in any way affecting the liability hereunder of the undersigned: (i) release, renew or extend the time for performance of any of the obligations under the Lease; (ii) extend the Lease; (iii) sell, release, waive or change any security held for such obligations; and (iv) otherwise deal with Tenant or with any assignee or co-guarantor, as Landlord may elect. Notice of acceptance of this guaranty, as well as all demands, presentments, notices of protest, notices of nonpayment, nonperformance or nonobservance, and notices of every kind or nature, including those of any action or nonaction on the part of Landlord, Tenant, or anyone else, are hereby waived. Failure of Landlord to enforce its rights against Tenant or concessions made by Landlord to Tenant shall not affect the guarantor's liability hereunder. Upon any default by Tenant, Landlord may, at its option, proceed directly and at once, without notice, against the undersigned to collect and recover all amounts and obligations hereby guaranteed, or any portion thereof, without: (i) proceeding against Tenant or any other person or entity; or (ii) foreclosing upon, selling, or otherwise disposing of or collecting or applying any property, real or personal, securing said obligations or any renewals or extensions thereof.

Dated: 01/10/08

Jorge Sanchez

CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

Approved _____ Mayor
Veto _____
Override _____

Agenda tem No. 6(L)(1)(A)
9-24-02

RESOLUTION NO. R-1028-02

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO APPROVE A SUB-LEASE AGREEMENT BETWEEN WESTREC EQUITIES, INC. AND JAIME ANDRES GRAELLS FOR THE RESTAURANT SERVICE OPERATION AT HAULOVER MARINE CENTER LOCATED AT HAULOVER PARK AND MARINA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is attached for reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the sub-lease agreement between Westrec Equities, Inc. (Sub-lessor) and Jaime Andres Graells (Sub-lessee) for the restaurant service operation at Haulover Marine Center located at Haulover Park and Marina substantially in the form attached hereto and made a part hereof; and authorizes the County Manager to approve the sub-lease agreement contingent on the satisfaction of the conditions set forth in the accompanying memorandum, proper execution by all parties and review by the County Attorney.

The foregoing resolution was offered by Commissioner **Jimmy L. Morales**, who moved its adoption. The motion was seconded by Commissioner **Gwen Margolis** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro	absent	Jose "Pepe" Cancio, Sr.	aye
Dr. Barbara Carey-Shuler	absent	Betty T. Ferguson	aye
Gwen Margolis	aye	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	absent
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye

Sen. Javier D. Souto aye

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of September, 2002. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

By: KAY SULLIVAN
Deputy Clerk

Memorandum

Agenda Item No. 6(L)(1)(A)

To: Honorable Chairperson and Members
Board of County Commissioners

Date: September 24, 2002

From: Steve Shiver
County Manager

Subject: Sub-lease of Westrec Equities, Inc. for Restaurant Service Operation at Haulover Beach Park and Marina

RECOMMENDATION

It is recommended that the Board approve the sub-lease between Westrec Equities, Inc. (Sub-lessor) and Jaime Andres Graells (Sub-lessee) for operation of the restaurant at Haulover Beach Park and Marina.

BACKGROUND

In 1987, the County sought the development and operation of a boat storage facility and related activities at Haulover Beach Park and Marina. On July 19, 1988 (Resolution No. R-1051-88), a Lease Agreement was awarded to Gold Coast Racks, Inc. The first amendment to the Lease (Resolution No. R-409-95), approved by the Board on April 4, 1995, provided for assignment and amendment of the Lease to Westrec Equities, Inc. in accordance with a bankruptcy court ruling. Since that time, Westrec Equities, Inc., ("Westrec"), a subsidiary of Westrec Marinas, Inc. has operated the Haulover Marine Center in a manner that has substantially improved the quality of service to the public.

Paragraph 1 of the Lease Agreement allows for the operator to provide related services. One of the related activities specified in the original Lease Agreement is the operation of a snack bar. In response to that requirement, a small restaurant facility was incorporated into the retail facility in 1997 under an approved sub-lease with Chris Rice. This fourth lease amendment is to authorize a new owner under a sub-lease. It authorizes the sublet of the restaurant to Jaime Andres Graells, in compliance with page 9, paragraph 33, of the Lease Agreement with Westrec.

As provided for in the Agreement, the County receives 3% of the gross revenues collected from snack bar sales. In addition to other required payments under the lease, the required percentage payment together with a gross receipt report containing revenue information from all of Westrec's activities under the Lease is submitted to the County on a monthly basis.

The sub-lease requires that the County be provided the same reporting information and percentage of gross receipt payments as required in the master Lease. This information, and accompanying payment, will be included in Westrec's monthly Gross Receipt Report and percentage of gross receipt payments to the County required under the Lease.

The Park and Recreation Department has reviewed the sub-lessee's qualifications and find that Mr. Graells has extensive experience in the hospitality and restaurant field. A copy Mr. Graells curriculum vitae is attached (Attachment A). A background check performed by the Miami-Dade Park & Recreation Department utilizing the Criminal Justice Information System revealed no information of an adverse nature that would affect Mr. Graells ability to perform the responsibilities and obligations under the requested sub-lease.

The proposed sub-lease has been reviewed by the County Attorney's Office to ensure that the County is adequately protected in this matter (Attachment B). The sub-lease requires that the sub-lessee be subject to the same terms and conditions as the Master Lease with Westrec. This includes all financial reporting requirements and payment of the previously negotiated share of gross revenues (3%). In addition, the County has reserved the right to directly terminate any sub-lessee, for any cause, for which the lessee may be terminated. Further, the County does not amend, modify, or release any of the terms and conditions of the original Lease with Westrec. The terms of the proposed sub-lease are as follows:

Contract Start Date:	First of the month after County approval
Contract length:	Two years, unless extended or terminated earlier in accordance with the sub-lease
Payment Terms:	Basic Rent $1,250 per month due the first of each calendar month
	3% of monthly gross receipts from foodservice from $0.00 to $3,000.00
	5% of monthly gross receipts from foodservice from $3,000.01 to $5,000.00
	7% of monthly gross receipts from foodservice over $5,000.00

Given the above information, it is recommended that approval of the requested sub-lease be granted to continue the quality service Westrec provides to the public.

Attachments

Name: Jaime andres
Last Name: Graells,

Citizenship: Spanish

Marital Status: Married

Address: 4824 S.W. 152 Court Unit E
Miami – Florida 33185
Phone: 305-225 4816

Studies:

Elementary and High school: National School of Lleida, Spain

Hotel School in VIEUX BOIS - Switzerland

Languages:

English: Good
Spanish: Very good
French: Very good
Catalan: Very good
Italian: Good

Working experiences:

1. Hotel METROPOLE, Geneva, Switzerland
   Position: Waiter assistant from Sept. 68 to Sept. 70
   Chef assistant in kitchen from Oct. 70 to May 72

2. Hotel METROPOLE, Geneva, Switzerland
   Position: Receptionist from October 72 to June 73

3. CLINICA DE GENOLIER, Genolier, Switzerland
   Position: Receptionist from June 73 to June 74

4. Hotel ELYSEE, Geneva, Switzerland
   Position: Receptionist from September 74 to June 75

5. Hotel CRILLON, Caracas, Venezuela
   Position: Receptionist from March 76 to February 78

6. Hotel TAMANACO, Caracas, Venezuela
   Position: Assistant Manager at Front Desk (Reception) from February 78 to April 79

7. INTERPUENTE HOTELES, Hotel AGUAS CALIENTES, Ureña, State of Táchira, Venezuela
   Position: Hotel Manager from May 79 to May 81

8. FLAG INSTALACIONES, S.A. Maracaibo, Venezuela
   Position: Site Administrator for the construction of the PLASTILAGO (Plásticos del Lago) plant in El Tablazo from May 81 until April 83

9. HOMARO Administradora de Hoteles, C.A., Maracaibo, Venezuela
   (Bar Restaurant El Payés and Hotel San Martín)
   Position: Chef and Administration Manager from May 1983 until August 2001

10. HOMARO Restaurant Company, Miami, Florida
    Position Chef and Administration Manager

SUBLEASE

between

Westrec Equities, Inc.,
a California Corporation
("Sublessor")

and

ANDRE GRAELLS
Jaime
("Sublessee")

Restaurant Facility
Haulover Marine Center
Miami, Florida

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SUBLEASE

1. Basic Terms.

(a) **Sublessor's Name and Address:** Westrec Equities, Inc., a California Corporation
Haulover Marine Center
15000 Collins Avenue
Miami, FL 33154
Attn: Marina Manager
Telecopy No: (305) 945-0995

With a Copy To: Westrec Equities, Inc.
c/o Westrec Properties, Inc.
16633 Ventura Boulevard
Sixth Floor
Encino, California 91436
Attn: William Anderson
Telecopy No: (818) 907-1104

(b) **Sublessee's Name and Address:** Jaime ~~Garaclis~~ GRAELLS
Haulover Marine Center
15000 Collins Ave.
Miami, FL 33160

(c) **Sublessee's Trade Name:** After Deck Restaurant

(d) **Premises:** Restaurant in the Marine Center Building, as depicted on Exhibit A, attached hereto, located at Haulover Marine Center, North Miami Beach, Florida, (the "Marina") and all fixtures and improvements located in such area.

(e) **Term:** Commencing on _____, 2002 and ending on _____, 2003, unless extended or terminated earlier in accordance with this Sublease.

(f) **Basic Rent:** $1,250/month

(g) **Concession Fee:** See Section 3.2

(h) **Security Deposit:** $7,000

(i) **Business to be conducted on Premises:** Family style restaurant

(j) **Monthly Common Area Maintenance Charge:** Waived

(k) **Utilities are to be paid by Sublessee or Sublessor as indicated:** *

Water	Sublessor	Electricity	Sublessee
Gas	Sublessee	Sewer	Sublessor
Telephone	Sublessee	Garbage	Sublessee **

* If any of the utilities which are paid by Sublessee as indicated above are not separately submetered, then Sublessor shall reasonably determine Sublessee's prorata share and bill Sublessee for its portion of utilities.

** Tenant shall pay Landlord $50/month for garbage service. Provided Landlord's garbage fees increase as a direct cause from the Restaurant's business, then Tenant's garbage service obligation shall be increased to include such additional portion.

(l) **Master Landlord:** Metropolitan Dade County Florida

(m) **Date of Sublease:** _____

2. Premises.

2.1 Real and Personal Property. Sublessor hereby Subleases to Sublessee, and Sublessee hereby Subleases from Sublessor the Premises. Sublessee acknowledges that Sublessee has examined the Premises prior to executing this Sublease and agrees that the Premises are in acceptable working order and repair and are suitable for Sublessee's intended purpose. Sublessee accepts the Premises as is and understands that Sublessor makes no express or implied warranties of habitability, suitability, quality, condition, merchantability or fitness for any particular purpose or use concerning the Premises, and Sublessee hereby waives all such warranties. When possession of the Premises is delivered to Sublessee, the Premises shall include that certain personal property listed in Exhibit B attached hereto and by this reference incorporated herein. Sublessee shall be responsible for the maintenance or replacement of all such personal property as and when necessary as well as the purchase of any additional personal property necessary to operate Sublessee's business. Upon the termination of this Sublease, Sublessee shall deliver to Sublessor personal property comparable to that enumerated in Exhibit B.

2.2 The Master Lease. Sublessee acknowledges that Sublessor's right to occupancy and control of the Marina has been granted pursuant to a lease (the "Master Lease") from Master Landlord. All of Sublessee's rights hereunder are subject and subordinate to the provisions of the Master Lease. Sublessee has received a complete copy of and reviewed the Master Lease. Sublessor will promptly forward any future amendments to the Master Lease to Sublessee. In the event that the Master Lease shall be terminated for any reason whatsoever, this Sublease shall likewise terminate without further liability to either party. During the term of this Sublease, Sublessee does hereby expressly assume and agree, for the benefit of Sublessor and Master Landlord, to perform and comply with and be bound by each and every obligation of and restriction on Sublessor under the Master Lease, except for the payment of rent, as such obligations relate to the Premises. The obligations that Sublessee has assumed under this Section are hereinafter referred to as "Sublessee's Assumed Obligations." Sublessee shall indemnify and hold Sublessor free from and harmless and defend Sublessor against all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

3. Rent.

3.1 Basic Rent. All Basic Rent shall be payable in advance, on the first day of each calendar month during the term of this Sublease. If the first month of the Sublease is a partial calendar month, Basic Rent shall be due on the first day of the term of this Sublease for that partial month. At the beginning of each Lease year after the initial Lease year, the Basic Rent payable for that Lease year shall be the Basic Rent payable for the previous Lease year increased by the same percentage as the Consumer Price Index published immediately prior to that Lease Year shall have increased from that published immediately prior to the previous Lease year. For the purposes of this Lease, the term "Consumer Price Index" shall refer to the Consumer Price Index for all Urban Consumers - U.S. City Average (All Items) compiled by the U.S. Department of Labor - Bureau of Labor Statistics based on 1982-84 as 100. In no event shall the Basic Rent payable in any year be less than that payable during the previous year.

3.2 Concession Fees. Sublessee shall pay to Sublessor, 15 business days prior to the due date, all amounts ("Concession Fees") payable to Master Landlord under the Master Lease on account of Sublessee's operations at the Premises or otherwise pursuant to this Lease. Sublessee acknowledges that it has received, read and understands the provisions of the Master Lease. Sublessee also agrees to provide to Sublessor, promptly 15 business days before due, at Sublessee's expense, all reports and operating statements required by the Master Lease to be provided on account of its operations within the Marina or determined by Sublessor or Master Landlord to be required to confirm the amount of Concession Fees. Sublessee shall pay any penalties imposed by the Master Landlord arising as a result of Sublessee's breach of its obligations to furnish reports as required by this Section. Sublessee's Concession Fees due are:

3% of monthly gross receipts from foodservice from $0.00 to $3,000.00;
5% of monthly gross receipts from foodservice from $3,000.01 to $5,000.00;
7% of monthly gross receipts from foodservice over $5,000.00.

3.3 Reports and Audits. Sublessor shall have the right, at any time during regular business hours, upon notice to Sublessee, to inspect the books of Sublessee for purposes of verifying the accuracy of Sublessee's reports relating to any Rent based on Sublessee's operations. Sublessor shall have the right to cause an audit to be made of Sublessee's books by an independent firm of certified public accountants to be designated by Sublessor for the purpose of confirming the accuracy of the reports submitted by Sublessee. If the audit discloses an underpayment of Rent, Sublessee shall immediately pay to Sublessor the amount of the underpayment with interest at the maximum lawful rate from the date the payment should have been made, plus a late charge for late payment of Rent. Sublessor shall pay the cost of such audit except that if such audit shall disclose that the portion of Rent based on Sublessee's operations for the applicable period exceeds, by 3% or more, such Rent paid by Sublessee, Sublessee shall immediately pay all costs of or related to the audit. The occurrence of a discrepancy in the reporting of such Rent of 3% or more shall constitute a default hereunder. Sublessee acknowledges that its records are subject to audit under this Lease and the Master Lease and must retain its records in contemplation of such occurrence. Sublessee agrees for a period of seven years following the close of its fiscal year to keep at the Premises or at any location in the County where the Marina is located, full and accurate books of accounts and records relative to the transactions in the Premises in accordance with generally accepted accounting principles consistently applied. Without limiting the generality of the foregoing, the following records shall be kept by Sublessee: (a) federal and state income tax returns, (b) state and local sales tax and use tax returns, (c) copies of all sales slips or invoices, (d) bank statements and deposit receipts, (e) paid invoices for purchase of merchandise, (f) merchandising receiving and shipping records, (g) all cash disbursements, cash receipts, sales and purchases, and (h) any other financial information which Sublessor reasonably deems necessary.

3.4 Payment of Rent. Rent payments shall be delivered to Sublessor at Sublessor's address. Checks shall be made payable to the Marina. "Rent" hereunder shall include Basic Rent, Percentage Rent, if applicable, Concession Fees and as "Additional Rent," such other sums and expenses payable by Sublessee on the terms and conditions specified in this Sublease. Rent payable for any fractional portion of a month or year at the beginning or end of the term of this Sublease shall be a like fraction of the Rent due for an entire month or year. If any Rent payment is not received within five days after it is due, Sublessee shall pay a late charge of 5% of such payment, or interest from the date Rent was due at the maximum lawful rate, whichever is greater.

4. Security Deposit. Sublessee has deposited with Sublessor the Security Deposit as security for the full performance and observance of each of Sublessee's obligations under this Sublease. If Sublessee is in default under this Sublease, Sublessor may use the whole or any part of the Security Deposit to satisfy any sum due to Sublessor or to defray any expense or damage reasonably incurred by reason of the default. In the event that all or part of the Security Deposit is so used, Sublessee shall on demand pay to Sublessor a like sum to replenish the Security Deposit. Sublessor is not a trustee of the Security Deposit and may commingle it or use it in ordinary business. No interest shall accrue on it. At the termination of this Sublease or any extension or renewal thereof, if Sublessee is not then in default, Sublessor shall return the remaining balance of the Security Deposit to Sublessee or, at Sublessor's election, to the last assignee of Sublessee's interest. If Sublessor shall transfer its interest in the Marina during the term of this Sublease, Sublessor may pay the Security Deposit to the transferee and Sublessor will then be released from all liability to Sublessee for the return of the Security Deposit.

5. Use.

(a) Sublessee shall operate on the Premises the business described in Section 1 and shall use the Premises for no other purposes without the specific consent of Sublessor, which consent may be withheld in Sublessor's sole discretion. Sublessee shall continuously and at all times actively and diligently operate its business on the Premises in a first class and reputable manner. Sublessee shall employ its best business judgment, efforts and abilities to operate its business on the Premises in an efficient and businesslike manner so as to enhance the reputation and attractiveness of the Premises and the Marina.

(b) No use shall be made or permitted to be made of the Premises, nor any act done, which may increase the existing rates of insurance upon the building within which the Premises are located, or which may cause the cancellation of any insurance policy covering said building or any portion thereof. If any act on the part of Sublessee or use of the Premises by Sublessee shall cause, directly or indirectly, an increase of Sublessor's insurance expense, said additional expense shall be paid by Sublessee to Sublessor upon demand. Such payment by Sublessee shall not limit Sublessor in the exercise of any rights or remedies. Sublessee, at its sole expense, shall comply with any and all requirements pertaining to the use of the Premises, or of any insurance organization or company, which compliance may be necessary for maintenance of reasonable fire, extended coverage, public liability and other insurance upon the building and the appurtenances thereto.

(c) Sublessee shall not commit, or suffer to be committed, any waste or nuisance upon the Premises.

(d) Sublessee shall keep the Premises open for business from a minimum of eight hours per day, which includes lunch time, seven days each week or such other hours as Sublessor and Sublessee may mutually agree.

(e) Sublessee shall not vacate or abandon the Premises at any time during the term of this Sublease. If Sublessee shall abandon, vacate or surrender the Premises, or be dispossessed therefrom by process of law or otherwise, any personal property belonging to Sublessee and left in or upon the Premises shall be deemed abandoned at the option of Sublessor.

(f) Sublessee shall not post or erect any signs at the Premises or elsewhere in the Marina without Sublessor's prior written consent.

6. Compliance with Laws/Hazardous Materials.

6.1 Compliance with Laws. Sublessee shall, at Sublessee's cost and expense, cause the Premises to be used in accordance with all: (a) laws, ordinances, codes, licenses, permits, orders, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency ("Laws") applicable to Sublessee or the Premises, including without limitation, all applicable Laws pertaining to air, water and upland runoff/stormwater quality, fuel storage tanks, Hazardous Materials (as defined below), air emissions and other environmental matters ("Environmental Laws"), all zoning and other land use matters and the Americans with Disabilities Act; (b) similar applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (c) policies of insurance at any time in force with respect to the Premises; and (d) the Marina rules. If Sublessee receives any notice that Sublessee or the Premises is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Sublessee will promptly furnish a copy of such notice to Sublessor.

6.2 Hazardous Materials Upon Premises Prohibited; Indemnity Sublessee shall not have or allow any Hazardous Materials upon, about or beneath the Premises or the Marina, except (i) small quantities of Hazardous Materials commonly used in normal office operations or for premises cleaning and maintenance and used for those purposes by Sublessee and (ii) boat fuel, oils and other fluids contained in the boat in-use fuel tank, engine or other mechanical system. In no event shall Sublessee install, cause or allow any underground or aboveground storage tank or any condition at the Premises that requires a hazardous waste treatment, storage or disposal permit under the federal Resource Conservation and Recovery Act, 42 U.S.C. § § 6901 et seq., or any analogous state or local law. Without limiting the provisions of Section 21.6, Sublessee shall indemnify, defend and hold Sublessor and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of

Sublessor and of any affiliated company or person harmless from and against any and all Environmental Damages (as defined below). Sublessee's obligation under this Section shall survive the expiration or termination of this Sublease.

6.3 Definitions.

(1) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of a claim, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of (i) any Hazardous Material that comes to be present at or is disposed or of released at or from the Premises during the term of this Sublease, (ii) any Hazardous Material that comes to be present or is disposed of or released at or from the Marina due to Sublessee's action or inaction, or (iii) the breach of any provision of Section 6 of this Sublease involving Hazardous Material or Environmental Laws, including without limitation lost profits, consequential damages (foreseeable or unforeseeable), diminution of property value, claims brought by or on behalf of employees of Sublessee (with respect to which Sublessee waives any immunity to which it may be entitled under any industrial or worker's compensation laws, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or breach of Section 6 as required by law and as necessary to make full economic use of or restore the full economic value of the Premises or any other affected property or otherwise expended in connection with such conditions.

(2) "Hazardous Material" means any substance (i) which is or becomes defined as "hazardous" under any federal, state or local Law, (ii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is or becomes regulated as such by any federal, state or local governmental authority, (iii) the presence of which requires investigation or remediation under any federal, state or local law, (iv) which causes or threatens to cause a nuisance upon or waste to the Premises, the Marina or adjacent properties or threatens to pose a hazard to the health or safety of persons on or about the Marina, or (v) without limitation contains gasoline, oil, diesel fuel or other petroleum products, asbestos or polychlorinated biphenyls (PCB's).

6.4 Obligation to Remediate. Notwithstanding the obligation of Sublessee to indemnify Sublessor pursuant to this Sublease, at Sublessor's option Sublessee shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Sublessee shall take all actions necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. All such work shall be performed by one or more contractors, selected by Sublessee and approved in advance and in writing by Sublessor. Sublessee shall proceed continuously and diligently with such actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Premises and any other affected area. Sublessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Sublessee shall promptly provide to Sublessor copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Sublessee shall permanently seal or cap all monitoring wells and test holes to industrial standards in compliance with applicable federal, state and local laws and regulations or such more stringent specifications as may be necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, remove all associated equipment, and restore the Premises and any other affected area to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder. Within 10 days of demand therefor, Sublessee shall provide Sublessor with a bond, letter of credit or similar financial assurance evidencing that the necessary funds are available to perform the obligations established by this paragraph.

7. Personnel. All personnel employed by Sublessee shall be clean, neat, courteous and responsive to the needs of boat owners and other customers at all times. Sublessee's employees shall park their personal vehicles only in areas designated by Sublessor. Failure of Sublessee's personnel to comply with the foregoing shall constitute a default hereunder.

8. Alterations. Sublessee shall not make nor suffer to be made any alterations, additions or improvements to or of the Premises or any part thereof without the written consent of Sublessor and Master Landlord.

9. Liens. The interest of Sublessor in the Premises shall not be subject to liens for improvements made by Sublessee. Sublessee will not permit to remain and will promptly discharge, at its cost and expense, all liens, encumbrances and charges upon the Premises or any part thereof. Sublessor shall have and is hereby given authority to enter upon the Premises at any time to post any notices which, in its opinion, shall be necessary to hold Sublessor harmless from any claim or liability arising out of any work done on the Premises. Sublessor may require Sublessee to execute and cause to be recorded a memorandum of this Sublease or such other documents as Sublessor may determine to be necessary to effect such purposes. If Sublessee shall fail to discharge such liens as aforesaid, then, in addition to any other right or remedy of Sublessor, Sublessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien, by depositing in court or by giving security or in such other manner as is or may be prescribed by law. Any amounts paid by Sublessor for any of the aforesaid purposes and all reasonable expenses of Sublessor, including counsel fees, with interest thereon at rate of the lesser of 12% per annum or the maximum rate allowed under the law, from the date of payment, shall be repaid by Sublessee to Sublessor on demand and if unpaid, may be treated as Additional Rent.

10. Assignment and Subletting. Sublessee shall not sublet, assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease or any interest therein, without the prior written consent of Sublessor, which Sublessor may give in its sole discretion, and, if required by the Master Lease of Master Landlord. A change in the control of Sublessee shall constitute a transfer for purposes of this Sublease. A consent to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Any such assignment or subletting without such consent shall be void, and shall, at the option of Sublessor, terminate this Sublease. In any event, Sublessor's consent to any assignment or subletting shall not relieve Sublessee from any obligation under this Sublease. In the event of default of any assignee of Sublessee in the performance of any of the terms hereof, Sublessor may proceed directly against Sublessee without the necessity of exhausting remedies against such assignee.

11. Maintenance. Sublessor shall maintain the structural soundness of the Premises, which portions are limited to foundation, exterior walls and roofs. Sublessee shall, at Sublessee's sole cost and expense, maintain all other portions of the Premises and every part thereof in good, neat and sanitary condition and repair, at all times free from trash and rubbish. Sublessee shall repair all damage to the Premises resulting from use and wear by Sublessee. Sublessee shall be responsible for the repair or replacement of any broken windows or doors and shall maintain and repair all equipment within the Premises, all heating, ventilating and air conditioning equipment and all electrical facilities within the Premises. All repairs and replacements made by Sublessee under this Section or the Section entitled "Damage to Premises" shall be made under the supervision and with the approval of Sublessor, and shall be of a quality equal to the original work. At the reasonable request of Sublessor, Sublessee, at Sublessee's expense, shall remedy any condition on the Premises not in keeping with the pleasing appearance of the Marina. Sublessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Sublessee the right to make repairs at Sublessor's expense or would terminate this Sublease due to Sublessor's failure to keep the Premises in good order, condition and repair. If Sublessee fails to perform its obligations under this Section or the Section entitled "Damage to Premises," Sublessor may, at its option (but shall not be required to), enter upon the Premises, after five days' prior written notice to Sublessee, and put the same in good order, condition and repair and the cost thereof together with interest at the maximum lawful rate shall become due and payable as Additional Rent to Sublessor upon its demand.

12. Taxes. Sublessee shall pay, ten days prior to delinquency, all taxes, assessments, license fees and public charges levied for or during the term of this Sublease against or on Sublessee's business operations, trade fixtures, leasehold improvements, merchandise or any personal property in possession of Sublessee, or installed by or for Sublessee, in, upon or about the Premises and for any real property taxes assessed with respect to the Premises. Such obligation is assumed by Sublessee whether such assessment is made against Sublessee in the first instance or is made against Sublessor. If the Premises are not separately assessed by the local assessing authority, then Sublessor shall allocate the real property taxes between the various elements of the Marina or the Premises on an equitable basis. Sublessee shall pay and hold Sublessor harmless from all sales taxes payable on account of this Sublease and Sublessee's sales made pursuant to this Sublease.

13. Surrender Upon Expiration or Termination. Sublessee shall, upon the expiration or earlier termination of this Sublease for any reason as provided herein, immediately and without notice from Sublessor, surrender and deliver up the Premises in such condition as may be consistent with the performance of all the Sublessee's obligations in this Sublease and shall deliver all keys to Sublessor. Unless Sublessor requires their removal, all alterations, improvements, additions and fixtures upon the Premises shall be the property of Sublessor upon the expiration or earlier termination of this Sublease.

14. No Abatement. No abatement of Rent or other compensation shall be claimed or allowed for loss, inconvenience or discomfort arising from the making of repairs, alterations or improvements to any areas within the Marina, including the Premises.

15. No Representations. Sublessee hereby specifically covenants that all of the terms of this Sublease have been fully and completely set forth herein and no promises or representations have been made by Sublessor or any of its agents or representatives except as specifically set forth herein. No surrender of this Sublease on Sublessee's part, and no modification or waiver by Sublessor of any of the terms hereof, shall be binding upon Sublessor unless in writing signed by a general partner of Sublessor.

16. Holding Over. If, with Sublessor's consent, Sublessee holds possession of the Premises after the termination or expiration of this Sublease, Sublessee shall become a Sublessee from month to month on the same terms and conditions contained herein except that Basic Rent shall be increased by 12%.

17. Entry by Sublessor. Sublessor and its authorized partners and employees shall be permitted during the term of this Sublease to visit and inspect the Premises during normal business hours. Sublessor shall not enter the Premises without cause and prior notice to Sublessee outside of normal working hours. However, in the event of an emergency requiring immediate admission, if Sublessee shall not be personally present to open and permit an entry into the Premises, Sublessor or its agents may forcibly enter the same without rendering Sublessor or such agents liable to any claim or cause of action for damages by reason thereof and without in any manner affecting the obligations and covenants of this Sublease.

18. Default by Sublessee; Remedies.

18.1 Default. The following shall constitute a default by Sublessee under this Sublease:

(i) Any failure to pay Rent when due.

(ii) Any failure to perform the services and obligations agreed to be performed by Sublessee pursuant to the Section entitled "Use," if such failure is not cured within ten days after notice from Sublessor as to such failure.

(iii) Any breach of any other covenant or agreement of Sublessee contained herein where Sublessee does not commence and proceed diligently to cure such breach within 30 days after notice from Sublessor as to such breach.

(iv) Any abandonment of the Premises by Sublessee.

(v) The filing by Sublessee of a voluntary petition in bankruptcy, or the adjudication of Sublessee as bankrupt or insolvent, or the filing by Sublessee of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy or insolvency or a general assignment by Sublessee for the benefit of creditors.

Sublessor may, at its option (but shall not be required to), cure any default by Sublessee and any costs incurred by Sublessor in so doing, together with interest at the maximum lawful rate, shall become due and payable as Additional Rent to Sublessor upon demand.

18.2 Remedies. In the event of any default or breach by Sublessee, Sublessor may at any time thereafter, in Sublessor's sole discretion, with or without notice or demand and without limiting Sublessor in the exercise of a right or remedy which Sublessor may have by reason of such default or breach do any one or more of the following:

(i) Terminate Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Premises to Sublessor. In such event, Sublessor shall be entitled to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges and adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Sublessee proves could be reasonably avoided, and that portion of any leasing commission paid by Sublessor and applicable to the unexpired term of this Sublease. Unpaid installments of Rent or other sums shall bear interest from the date due at the maximum legal rate.

(ii) Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Premises. In such event, Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover the Rent and any other charges and adjustments as may become due hereunder.

(iii) pursue any other legal remedy now or hereafter available to Sublessor under the laws of judicial decisions of the State of Florida.

19. Damage to Premises.

19.1 Damage to Structure of Premises. If the structure of the Premises, i.e. roof, foundation or exterior walls, shall be partially damaged by fire, storm or other casualty, repair shall be made by Sublessor with reasonable dispatch. In the event of the substantially total destruction of the structure of the Premises by fire or otherwise, or if the damage shall be so extensive that it cannot, in the opinion of Sublessor, be repaired within three months from the date of such damage, then at Sublessor's option the Rent shall be paid only up to the time of such destruction or damage and this Sublease and the term thereof shall thereupon cease, except that Sublessee shall be and continue to be liable for any destruction or damage caused or permitted by Sublessee. Notwithstanding the other provisions of this Section, Sublessor shall not be obligated to incur any repair or reconstruction expense for the structure of the Premises in excess of the proceeds of any insurance policy maintained by Sublessor payable to Sublessor for such expense. Sublessor shall have no obligation to repair or rebuild any of Sublessee's fixtures, equipment, tenant improvements or personal property and Sublessor shall not be liable for any loss or damage to any such property suffered by Sublessee. Notwithstanding the provisions of the Section entitled "Maintenance" and this Section, Sublessee shall pay the cost of repair and replacement due to damage or injury done to the structure of the Premises by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees. Sublessee shall pay such amount to Sublessor upon demand as Additional Rent, plus interest at the maximum lawful rate from demand until payment.

19.2 Nonstructural Damage to Premises. In the event that the Premises (other than the roof, foundation or exterior walls), or any of Sublessee's fixtures, equipment, tenant improvements or personal property are damaged or destroyed, Sublessee shall, at its sole expense, repair or replace such damage or destruction as soon as reasonably possible and this Sublease shall continue in full force and effect. Sublessee waives the benefit of any law which provides that a lease terminates upon the destruction of the thing which is leased.

20. Waiver of Claims. Sublessor shall not be liable to Sublessee and Sublessee hereby waives all claims against Sublessor for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever other than resulting from the willful misconduct or negligence of Sublessor or its employees.

21. Insurance.

21.1 Liability Insurance. Sublessee shall, at its sole expense, obtain and keep in force and effect a policy of combined single limit, bodily injury and property damage insurance against any liability arising out of the conduct of Sublessee's business and the ownership, use, occupancy or maintenance of the Premises, all areas appurtenant thereto, and the Marina. The policy shall insure performance by Sublessee of the indemnity provisions of this Sublease and shall include premises/operations, product liability, liquor liability, independent contractors and

personal injury liability coverages. Such insurance shall be a combined single limit policy in an amount not less than $1,000,000. Metropolitan Dade County must be included as additional insured with respect to this coverage.

21.2 Property Insurance. Sublessee shall, at its sole expense, obtain and keep in force during the term of this Sublease, a policy of insurance covering loss or damage to: (i) the Premises (other than the structure of the Premises, i.e., roof, foundation or exterior walls) unless such loss or damage is caused by the negligence or willful misconduct of Sublessor or Sublessor's agents, employees, contractors, licensees or invitees; (ii) the structure of the Premises, if such loss or damage is caused by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees; and (iii) Sublessee's fixtures, equipment, tenant improvements and personal property on the Premises against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage. Such policy shall be in the amount and on the terms reasonably required by Sublessor.

21.3 Workers' Compensation and Employer's Liability. Sublessee shall maintain workers' compensation insurance for all of Sublessee's employees who work on the Premises in compliance with state regulations. Workers' compensation insurance shall include Longshoreman Harbor Workers Act coverage and maritime law coverage. Sublessee shall maintain employer's liability insurance in an amount that is the greater of $100,000 or the amount required by applicable statutes.

21.4 Insurance Policies. The insurance required hereunder shall be procured from a responsible insurance company or companies authorized to do business in the State where the Marina is located and satisfactory to Sublessor. Each policy shall name Sublessor, Master Landlord, Westrec Marina Management, Inc. and any lenders holding mortgages on Sublessor's interest in the Marina as additional insureds and shall include loss payable clauses satisfactory to Sublessor. Each policy shall state that the insurance is primary over any insurance carried by Sublessor. Sublessee shall deliver to Sublessor the originals or certificates of all insurance policies required to be carried by Sublessee pursuant to this Section at least 30 days prior to: (i) the beginning of the initial Sublease term; and (ii) the expiration of any policy or policies being replaced during the term of the Sublease, together with evidence that the premiums therefore have been paid. All policies shall contain an endorsement prohibiting cancellation of coverage, reduction in coverage or any other modification except after 15 days prior written notice to all parties in interest.

21.5 Waiver of Subrogation. Sublessor and Sublessee each hereby waive any and all rights for recovery against the other or against the officers, employees, agents and representatives of the other for loss of or damage to such waiving party's property or the property of others under its control to the extent that such loss or damage is insured under any insurance policy in force at the time of such loss or damage. Sublessee shall, upon obtaining the policies and insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease.

21.6 Indemnity. Sublessee shall indemnify and hold each of Sublessor, all persons and companies affiliated with Sublessor, and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company or person (the "Indemnitee") harmless from and against all cost, loss, expense, suits, judgements, claims or liability (including attorneys' fees) (collectively, the "Claims") arising from Sublessee's use of the Premises and/or the Marina and from the conduct of Sublessee's business or from any activity, work or thing done, permitted or suffered by Sublessee in or about the Premises and/or the Marina or elsewhere and from any breach or default in the performance of any obligation on Sublessee's part to be performed under the terms of this Sublease (including Sublessee's noncompliance with any laws, as provided in Section 6), except to the extent the Claim arises from the willful misconduct or negligence of the Indemnitee. If any action or proceeding is brought against the Indemnitee by reason of any such Claim, Sublessee shall, upon notice from the Indemnitee, defend the same at Sublessee's expense by counsel satisfactory to the Indemnitee. This Section shall survive termination of this Sublease.

21.7 Insurance Required by Master Lease. If the Master Lease requires any insurance to be maintained with respect to the Premises in addition to the policies required above, Sublessee shall maintain such insurance.

22. Sublessor's Liability. Sublessee shall look solely to the estate of Sublessor in the Marina, subject to the rights of any mortgagee in respect of the Marina, for the collection or satisfaction of any judgment or other judicial process requiring the payment of money by Sublessor in the event of any default by Sublessor under this Sublease or any breach by Sublessor of any duties relating to this Sublease or the Premises; and no other property of Sublessor shall be subject to levy, execution or other procedures for the satisfaction of Sublessee's remedies.

23. Eminent Domain. In the event all or any part of the Premises are taken by reason of any exercise of the power of eminent domain, whether by a condemnation proceeding or otherwise, then this Sublease shall terminate as of the date of such taking or transfer. Sublessor shall be entitled to all awards and to all purchase monies attributable to the Premises, except as to any part of the award attributable to the improvements installed in the Premises at Sublessee's cost, which said part shall be payable to Sublessee.

24. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Sublease, the prevailing party shall be entitled to recover, for the reasonable fees of its attorneys in such action or proceeding. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations therewith, whether or not a legal action is subsequently commenced in connection with such default.

25. Waiver. The failure of Sublessor to insist in any one or more instances upon strict performance of any of the covenants of this Sublease shall not be construed as a waiver or relinquishment for the future of such covenant, rule or regulation, but the same shall continue and remain in full force and effect. The receipt by Sublessor of Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a

waiver of such breach, and no waiver by Sublessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Sublessor. Even though Sublessor shall consent to an assignment hereof, no further assignment shall be made without express consent in writing by Sublessor. The delivery of keys to the Sublease Premises to any officer or employee of Sublessor or to Sublessor's agent shall not operate as a termination of this Sublease or as a surrender of the Premises.

26. Notices. Communications relating to this Sublease shall be in writing and shall be delivered personally, sent by United States mail, first class postage prepaid, by telecopy, or by private messenger or courier service, to the parties or their assignees at the addresses as set forth in Section 1. A party may change these addresses by written notice to the other delivered in accordance with this Section. If a communication is mailed under this provision, it shall be deemed received on the earlier of: (i) five business days after it is mailed; or (ii) the date it is actually received. A communication by any other method permitted under this Section shall be effective when actually received.

27. Successors and Assigns. This Sublease and every provision hereof shall bind, apply to and run in favor of Sublessor, its successors and assigns, and of Sublessee and the successors and assigns of Sublessee. The term "Sublessor" as used herein shall mean only the owner or owners at the time in question of the interest in the Premises which Sublessor currently holds and in the event of any transfer of such interest, Sublessor herein named (and in case of any subsequent transfers the then transferor) shall be relieved from and after the date of such transfer of all liability with respect to Sublessor's obligations thereafter to be performed. The obligations contained in this Sublease to be performed by Sublessor shall be binding on Sublessor's successors and assigns only during their respective periods of ownership.

28. Estoppel Certificate. Sublessee shall at any time upon not less than ten days' prior written notice from Sublessor execute, acknowledge and deliver to Sublessor a statement in writing: (i) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect) and the date to which Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Sublessee's knowledge, any uncured defaults on the part of Sublessor hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of the Premises. At Sublessor's option, Sublessee's failure to deliver such statement within such time shall be material breach of this Sublease or shall be conclusive upon Sublessee: (i) that this Sublease is in full force and effect, without any modification except as may be represented by Sublessor; (ii) that there are no uncured defaults in Sublessor's performance; and (iii) that not more than one month's Rent has been paid in advance.

29. Subordination. Sublessee agrees that this Sublease, at Sublessor's option, shall be subordinated to any mortgage or deed of trust, whether presently encumbering the Premises, or which may hereafter be placed on the Premises, and to any advances to be made thereunder, any interest thereon and all renewals, replacements and extensions thereof, provided that such mortgagees or beneficiaries first request such subordination and thereafter agree in writing to recognize this Sublease in the event of foreclosure and for so long as Sublessee is not in default. Sublessee shall execute and deliver, without cost to Sublessor, whatever instruments may be required to effect such subordination, including an agreement to attorn to any mortgagee or beneficiary under any deed of trust or any purchaser at a foreclosure sale or any transferee by deed in lieu of foreclosure.

30. Sublessor's Assignment. Sublessor shall have the right to assign all or any portion of its rights under this Sublease to any other entity. If Sublessor so assigns its rights under this Sublease, such assignee shall become Sublessor hereunder.

31. Joinder. Sublessee agrees that, upon written request from Sublessor, Sublessee will promptly join in all applications for permits, licenses or other authorizations required by any governmental agencies or other body claiming jurisdiction in connection with any work which Sublessor may desire to undertake.

32. Miscellaneous. This Sublease is governed by the laws of the state in which the Marina is located and any question arising hereunder shall be construed or determined according to such law. Headings at the beginning of each numbered Section of this Sublease are solely for the convenience of the parties and are not a part of this Sublease. Time is of the essence of this Sublease. If any provision of this Sublease is or is held to be invalid or unenforceable, then to the extent possible all of the remaining provisions of this Sublease shall remain in full force and effect and shall be fully binding upon the parties hereto. Any modification to this Sublease must be in writing and must be consented to by Master Landlord. This Sublease is the entire agreement of the parties and supersedes all prior agreements, negotiations or understandings between the two parties with respect to the subject matter of this Sublease.

33. Joint and Several Liability. If Sublessee consists of more than one party, each party comprising Sublessee shall execute this Sublease on behalf of Sublessee and shall be fully liable for all of Sublessee's obligations hereunder, such liability being deemed to be joint and several on the part of Sublessee and the parties executing on behalf of Sublessee.

34. Sublessee's Business Conduct. Sublessor considers the manner in which Sublessee's conduct of business to be important considerations for this Sublease. The cleanliness of both the interior and exterior of the Premises shall be such that Sublessor and Sublessor's customers are confident that the Premises are being maintained in a healthful, eye pleasing manner. Any condition which exists that exhibits otherwise will be brought to Sublessee's attention in writing and must be corrected within 72 hours. Sublessee shall operate its business in a manner that is compatible with and shall not interfere with Sublessor's and Sublessor's customer's quiet enjoyment of the Marina and the family atmosphere of the Marina. The Premises shall operate as a family eating establishment where families with children are comfortable.

35. Outside Deck. Sublessee may have nonexclusive use of the outside deck surrounding the restaurant ("Outside Deck") to provide food service to Sublessee's customers as depicted on Exhibit A. Sublessor and its customers shall have the same access and use of the Outside Deck. Sublessee's use of the Outside Deck shall not restrict Sublessor's use, pedestrian access, or in any way obstruct traffic flow to all areas of the Marina.

36. Radon Disclosure. In accordance with Section 404.056, Florida Statutes, Landlord hereby notifies Tenant as follows: 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; and additional information regarding radon and radon testing may be obtained from the applicable county public health unit.

37. Lease Renewal. Provided no default has occurred under this Lease, both Landlord and Tenant shall negotiate in good faith in an effort to agree on terms and conditions which are mutually acceptable for an additional term.

38. Prior Sublessee. This Sublease shall be contingent on and shall not be effective until 1) execution of this Sublease by Sublessor and Master Landlord, and 2) the termination of the existing Sublease for the Premises. Sublessor makes no representation or warranty regarding the pre-existing Sublease, or whether any such termination can or will be obtained. Sublessor will not be responsible for any loss, liability, damage, expense or claim in the event such termination is not obtained and Sublessee hereby waives any such claim.

39. Alcohol Sales. The Premises is utilized as a family style restaurant, as such, at no time shall liquor beverages exceed 30% of total revenue. Tenant shall not sell packaged alcohol beverages.

40. Approval of Sublease. Notwithstanding any other provision of this Sublease, Sublessee acknowledges that this Sublease is subject to the approval and consent of Master Landlord. If such approval is not obtained, this Sublease shall terminate (except for those provisions hereof that expressly survive termination).

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Sublease as of the date below their signature below, to be effective as of the date set forth at the beginning of this Sublease.

"SUBLESSOR"

WESTREC EQUITIES, INC.,
A California Corporation

By: _____
Michael P. Robbins, Vice President

Date: 6/3/02

"SUBLESSEE"

_____ 05/29/2002.
Jaime ~~Garaells~~ GRAELLS Date

The undersigned hereby consents to this Sublease.

In consenting to this Lease, Landlord does not amend, modify, release or waive any of the terms and conditions of the original Lease. In the event of any conflict between the original Lease and this sublease, the terms of the original Lease shall govern.

"MASTER LANDLORD"

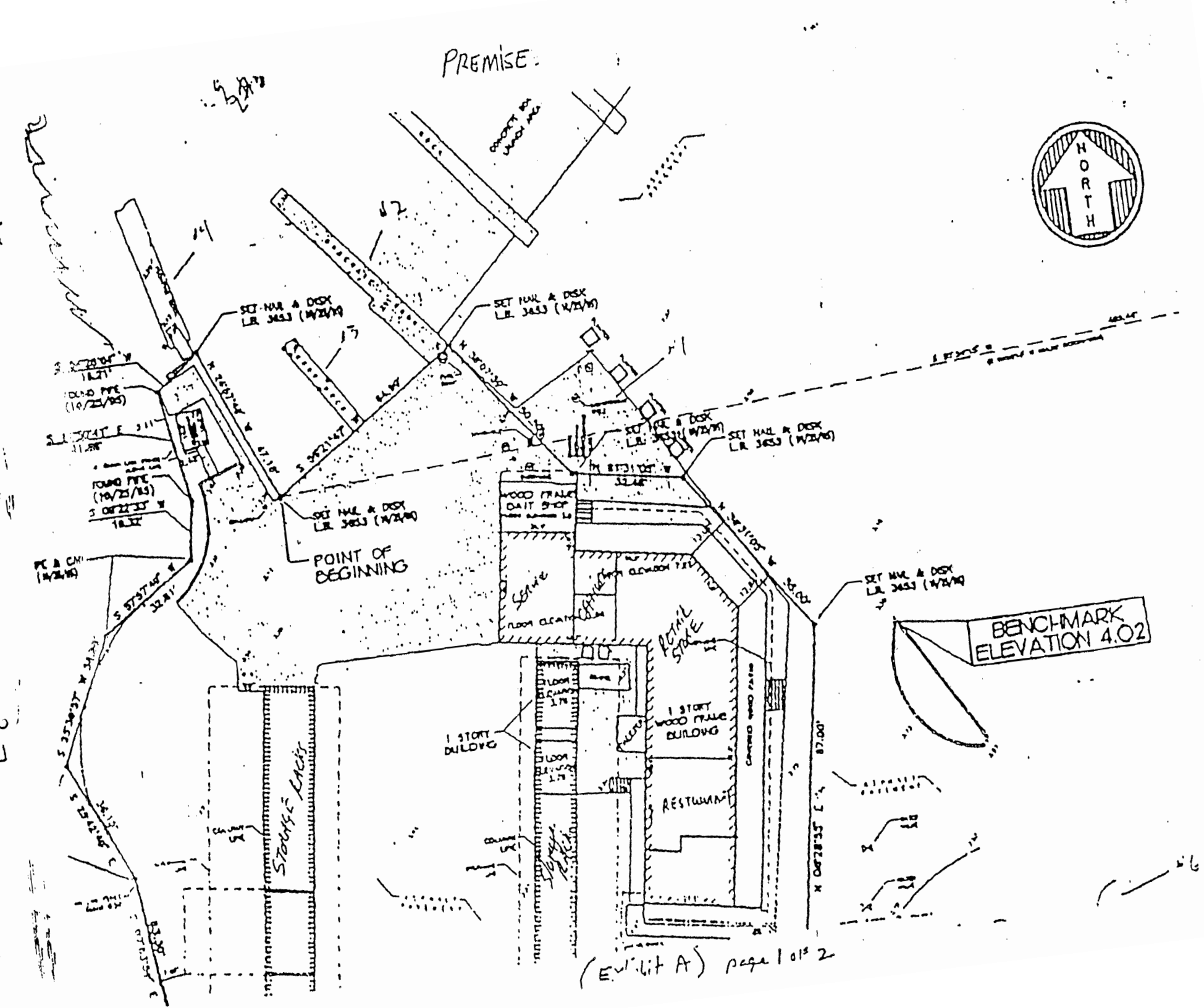
_____

By: _____

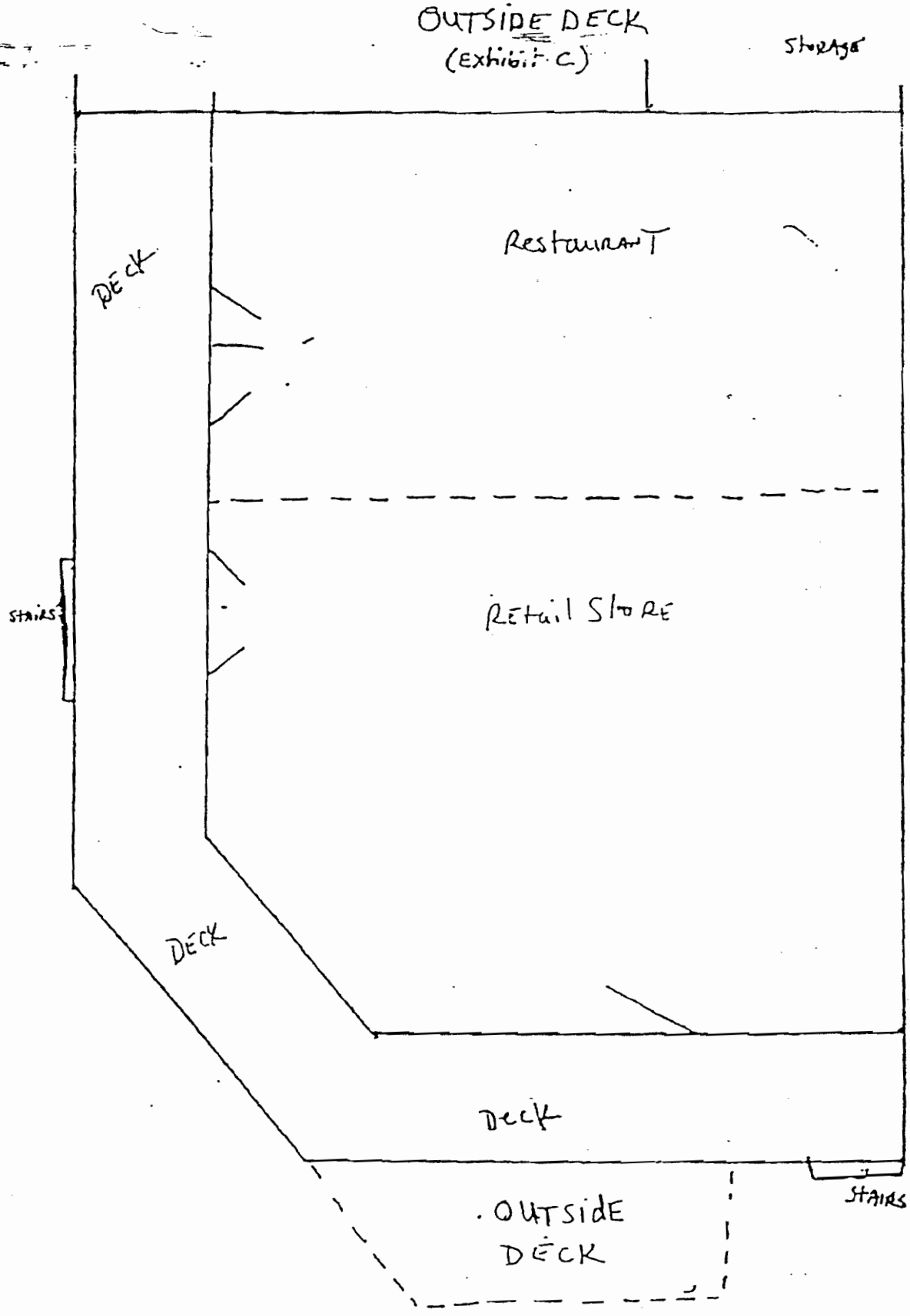
Name: _____

Title: _____

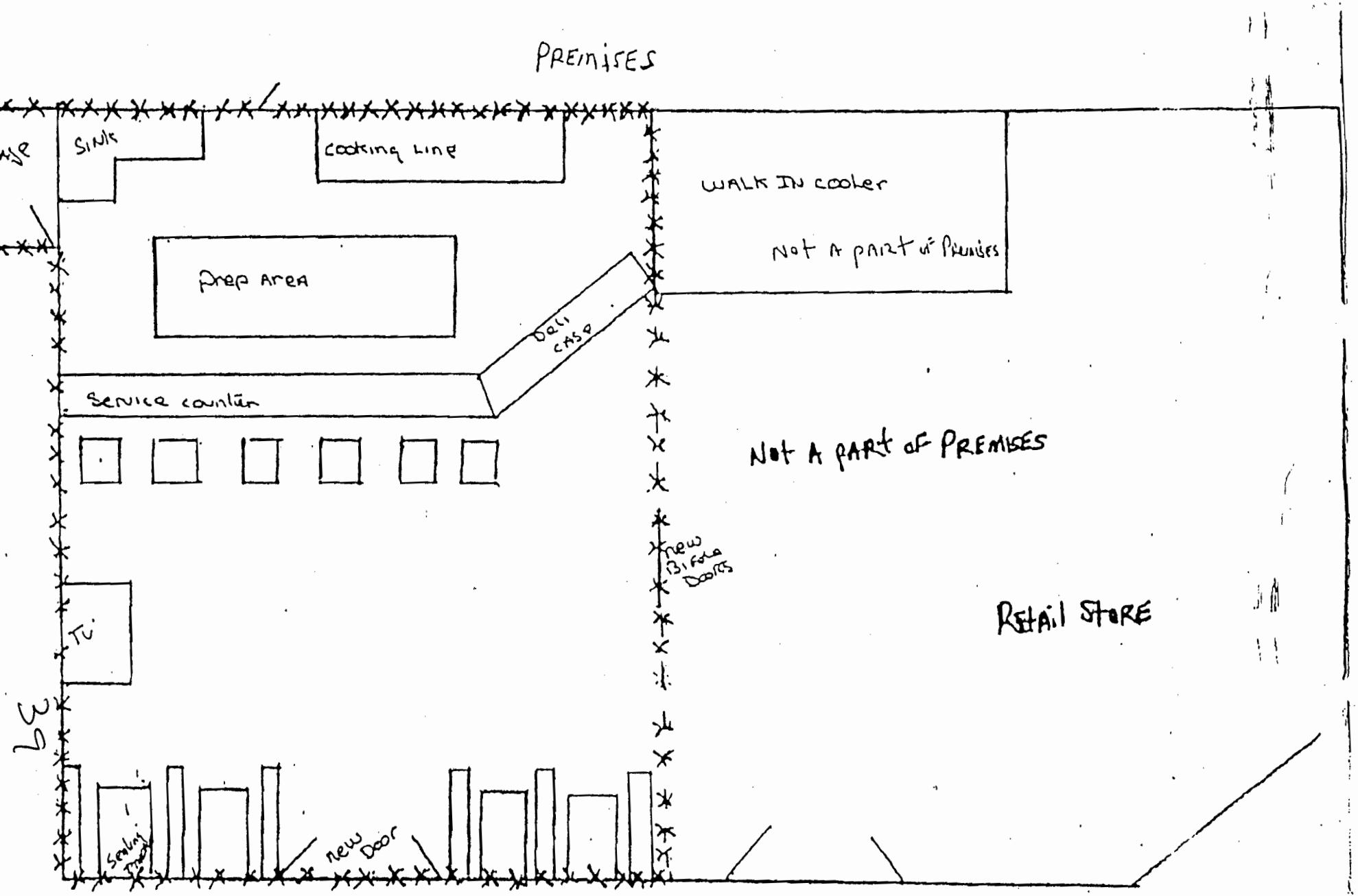
Date: _____



(Exhibit A) page 1 of 2


OUTSIDE DECK
(Exhibit C)
Storage
Restaurant
DECK
STAIRS
Retail Store
DECK
Deck
STAIRS
OUTSIDE
DECK

Not to scale



Not to scale

XXX denotes PREMISES

Personal Property List

1	McCray Commercial Refrig/Freezer	serial # 87368227	model # SC-CDS-35-8
1	Hobart Slicer Machine	serial # 56-851-730-LH	model # 1612
1	Coca Cola Dispensing Machine	serial # J9511K07093	model # CB23235L6
	Coca Cola Ice Machine	serial # ZS 1111116S	item code # 42233
1	Bunn O Matic Coffee Maker	serial # STF0027965	model # STF-15
1	~~Espresso Comobar Machine~~	serial # 12286	model # XL
1	~~Cappuccino machine~~	serial # 3270	model # APV1
1	Bunn O Matic Iced Tea Machine	serial # T000004388	model # T3-20230-0000
1	Crystal Tips Ice Maker Machine	serial # 132356-01M	model # BRS-725
1	Fogel R-22 Refrigerant	serial # PR-43311-943	model # CR-25-US
1	TMC True Freezer	serial # 11486118	model # TWT-48F
1	Panasonic Microwave	serial # AW230702372	model # NN-5462A
1	Eagle Food Service Triple Steamer	serial # 9511100186	model # DHT3-120
1	TMC True Refrigerator and Lunch Setup Top	serial # 11400244	model # TSSU-48-12
1	Eagle Wyatt Grill Machine (Charcoal)		
1	Vulcan Grill, Stove and Oven		
1	Vulcan Deep Fryer (2)	serial # 481099731	model # FF3
1	Electromaster	serial # 1547	model # SAS
1	Eagle Table under Electromaster		
1	Triple Sink - Drop In		
1	Banner Equipment / Draft Beer Dispenser -	- Budweiser and Bud Light	
1	~~Light Warmer from American Permanent Ware~~	serial # 9410-119	model # DW-12
1	Detecto Weight Machine	serial # 9001-25D	model # PC-30A
1	NEC Video Recorder/Player	serial # C9Y00871	
1	Trackersat Descramber	serial # 114329A	
1	60 inch RCA Television	serial # 7460396AZ	
3	17 inch Zenith Televisions	serial #'s 922-14490077, 925-18630133, 941-18632177	
1	Range Hood and Exhaust Fan		
1	Scott Paper Towel Dispenser		
1	Sani Fresh Hand Soap Dispenser		
1	Sanitation Sink		
1	Storage Shelves (7)		
1	Desk with Drawer		
1	Desk (no Drawer)		
1	Keter Plastic Storage Shelf		
1	Pyro-Chem Fire Extinguisher		
1	Amerex Fire Extinguisher		
3	Sysco Aluminum Spatulas		
1	~~Set of 4 Sysco Sauce Pots~~		
1	Set of 4 Sysco Fry Pans		
1	Proctor Silex Toaster		
1	Set of 9 Super Pans		
1	Set of 2 Stowaway Containers		
1	12 inch Stainless Steel Strainer		
2	14 inch Stainless Steel Strainer with Base		
1	Stainless Steel 3 part Component Containers		
1	Set of 3 18x12 inch Super Pans		
1	Set of 3 Glass Cake Tray		
1	16 inch Stainless Steel Strainer with Base		
1	~~1 Speed Bar Blender with two tops~~		
4	Royal Cup Coffee Maker Mugs		

Exhibit B

1254

Approved _____ Mayor

Veto _____

Override _____

Substitute
Agenda Item No. 6(A)(5)
10-21-97

RESOLUTION NO. R-1254-97

RESOLUTION AUTHORIZING EXECUTION OF A SUBLEASE BETWEEN WESTREC EQUITIES, INC. AND CHRIS RICE, AS PROVIDED FOR IN THE MASTER LEASE AGREEMENT BETWEEN METROPOLITAN DADE COUNTY AND WESTREC EQUITIES, INC. FOR OPERATION OF THE RESTAURANT AT HAULOVER MARINE CENTER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approve a Sublease between Westrec Equities, Inc. (Sublessor) and Chris Rice (Sublessee) for operation of the restaurant in the Marine Center Building at Haulover Marine Center at Haulover Beach Park, located at 10801 Collins Avenue, subject to all terms and conditions of the Master Lease Agreement between Metropolitan Dade County and Westrec Equities, Inc., in substantially the same form attached hereto and made a part hereof, the original of which is on file with the Clerk of the Board; and authorizes the County Manager to exercise all rights conferred therein.

The foregoing resolution was offered by Commissioner DR Barbara M .Carey , who moved its adoption. The motion was seconded by Commissioner Javier D. Souto and upon being put to vote, the vote was as follows:

Dr. Miriam Alonso	absent	James Burke	aye
Dr. Barbara M. Carey	aye	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	aye	Bruce C. Kaplan	aye
Gwen Margolis	absent	Natacha Seijas Millan	absent
Jimmy L. Morales	aye	Dennis C. Moss	aye
Pedro Reboredo	absent	Katy Sorenson	aye
Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of October, 1997. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MEMORANDUM

.stitute
Agenda Item No. 6(A)(5)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: October 21, 1997

FROM: Armando Vidal, P.E.
County Manager

SUBJECT: Sublease of Westrec Equities, Restaurant Facility at Haulover Marine Center

RECOMMENDATION

It is recommended that the Board authorize execution of the attached sublease agreement between Westrec Equities, Inc. (Sublessor) and Chris Rice (Sublessee) for operation of the restaurant in the Marine Center Building at Haulover Marine Center at Haulover Beach Park, and authorize the County Manager to execute documents in conjunction with this matter. This sublease will expire on September 30, 1998 unless extended or terminated earlier in accordance with the sublease.

BACKGROUND

In 1987, the County sought the development and operation of a boat storage facility and related activities at Haulover Beach Park. On July 19, 1988 (R-1051-88) a lease agreement was awarded to Gold Coast Racks, Inc. The latest amendment to the lease approved by the Board on April 4, 1995 (R-409-95), provided for assignment and amendment of the lease to Westrec Equities, Inc. in accordance with a Bankruptcy Court ruling. Westrec's lease with the County is for ten years (expiration date April 3, 2005) with two additional five year options to renew. Since that time Westrec Equities, Inc. ("Westrec"), a subsidiary of Westrec Marinas, Inc., a large marina management company, has operated the Haulover Marine Center in a manner that has substantially improved the quality of service to the public.

Westrec has kept current on all lease payments, and is ahead of the contract schedule for curing arrearages left by the prior lease holder. Original arrearage amount of $171,734 has already been reduced to $64,300. Westrec's lease payments to the County average $6,600 a month ($5,050 from marina and $1,550 from food service) and is derived from the following lease terms:

Food Service: $1,500 per month guarantee
and
3% monthly gross receipts from $0 - $3,000;
and
5% monthly gross receipts from $3,001 - $5,000;
and
7% monthly gross receipts over $5,000

Marina:	Greater of the sum of the percentages or minimum guarantee $4,000 minimum guarantee 10% rack storage, 7% boat rental, 5% towing and 3% supplies

One of the related activities specified in the original lease agreement provided for the operation of a snack bar. In response to that requirement, a small restaurant facility was incorporated in the retail facility. Westrec has requested authorization to sublet this component of the operation. As provided for in the lease agreement, subletting is permitted; however, it does require approval by the Board of County Commissioners.

The Park and Recreation Department has reviewed Mr. Rice's qualifications and finds that he has extensive experience in the food service industry. A background check was performed by the Metro-Dade Police Department (MDPD), which indicated that Mr. Rice has no record with MDPD.

The proposed sublease, a copy of which is attached, has been reviewed by the County Attorney's Office to insure that the County is adequately protected in this matter. In consenting to this sublease, the County does not amend, modify, or release any of the terms and conditions of the original lease with Westrec. Approval of the requested sublease will aid Westrec in further improving the quality of service it provides to the public, and as such, be in the best interest of the County.

Attachment

Sub.
615
10-21-97
R12 54-9

SUBLEASE

between

Westrec Equities, Inc.,
a California Corporation
("Sublessor")

and

Chris Rice
("Sublessee")

Restaurant Facility
Haulover Marine Center
Miami, Florida

SUBLEASE

1. Basic Terms.

(a) Sublessor's Name and Address: Westrec Equities, Inc., a California Corporation
Haulover Marine Center
15000 Collins Avenue
Miami, FL 33154
Attn: Marina Manager
Telecopy No: (305) 945-0995

With a Copy To: Westrec Equities, Inc.
c/o Westrec Properties, Inc.
16633 Ventura Boulevard
Sixth Floor
Encino, California 91436
Attn: William Anderson
Telecopy No: (818) 907-1104

(b) Sublessee's Name and Address: Chris Rice
1135 103rd Street, Suite G2
Bay Harbour Island
Miami, FL 33154
Telecopy No: (305) 866-0101

(c) Premises: Restaurant in the Marine Center Building, as depicted on Exhibit A, attached hereto, located at Haulover Marine Center, North Miami Beach, Florida, (the "Marina") and all fixtures and improvements located in such area.

(d) Term: Commencing on September 15, 1997 and ending on September 30, 1998, unless extended or terminated earlier in accordance with this Sublease.

(e) Basic Rent: $1,000/month

(f) Concession Fee: See Section 3.2

(g) Security Deposit: $7,000

(h) Business to be conducted on Premises: Family style restaurant

(i) Monthly Common Area Maintenance Charge: Waived

(j) Utilities are to be paid by Sublessee or Sublessor as indicated:

Water	Sublessor	Electricity	Sublessor
Gas	Sublessee	Sewer	Sublessor
Telephone	Sublessee	Garbage	Sublessor

(k) Master Landlord: Metropolitan Dade County Florida

(l) Date of Sublease:

2. Premises.

2.1 Real and Personal Property. Sublessor hereby Subleases to Sublessee, and Sublessee hereby Subleases from Sublessor the Premises. Sublessee acknowledges that Sublessee has examined the Premises prior to executing this Sublease and agrees that the Premises are in acceptable working order and repair and are suitable for Sublessee's intended purpose. Sublessee accepts the Premises as is and understands that Sublessor makes no express or implied warranties of habitability, suitability, quality, condition, merchantability or fitness for any particular purpose or use concerning the Premises, and Sublessee hereby waives all such warranties. When possession of the Premises is delivered to Sublessee, the Premises shall include that certain personal property listed in Exhibit B attached hereto and by this reference incorporated herein. Sublessee shall be responsible for the maintenance or replacement of all such personal property as and when necessary as well as the purchase of any additional personal property necessary to operate Sublessee's business. Upon the termination of this Sublease, Sublessee shall deliver to Sublessor personal property comparable to that enumerated in Exhibit B.

2.2 The Master Lease. Sublessee acknowledges that Sublessor's right to occupancy and control of the Marina has been granted pursuant to a lease (the "Master Lease") from Master Landlord. All of Sublessee's rights hereunder are subject and subordinate to the provisions of the Master Lease. Sublessee has received a complete copy of and reviewed the Master Lease. Sublessor will promptly forward any future amendments to the Master Lease to Sublessee. In the event that the Master Lease shall be terminated for any reason whatsoever, this Sublease shall likewise terminate without further liability to either party. During the term of this Sublease, Sublessee does hereby expressly assume and agree, for the benefit of Sublessor and Master Landlord, to perform and comply with and be bound by each and every obligation of and restriction on Sublessor under the Master Lease, except for the payment of rent, as such obligations relate to the Premises. The obligations that Sublessee has assumed under this Section are hereinafter referred to as

"Sublessee's Assumed Obliga" " Sublessee shall indemnify and hold Sublessor free from harmless and defend Sublessor against all liability, judgments, costs, nages, claims or demands, including reasonable attorneys s, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

3. Rent.

3.1 Basic Rent. All Basic Rent shall be payable in advance, on the first day of each calendar month during the term of this Sublease. If the first month of the Sublease is a partial calendar month, Basic Rent shall be due on the first day of the term of this Sublease for that partial month.

3.2 Concession Fees. Sublessee shall pay to Sublessor, 15 business days prior to the due date, all amounts ("Concession Fees") payable to Master Landlord under the Master Lease on account of Sublessee's operations at the Premises or otherwise pursuant to this Lease. Sublessee acknowledges that it has received, read and understands the provisions of the Master Lease. Sublessee also agrees to provide to Sublessor, promptly 15 business days before due, at Sublessee's expense, all reports and operating statements required by the Master Lease to be provided on account of its operations within the Marina or determined by Sublessor or Master Landlord to be required to confirm the amount of Concession Fees. Sublessee shall pay any penalties imposed by the Master Landlord arising as a result of Sublessee's breach of its obligations to furnish reports as required by this Section. Sublessee's Concession Fees due are:

3% of monthly gross receipts from foodservice from $0.00 to $3,000.00;
5% of monthly gross receipts from foodservice from $3,000.01 to $5,000.00;
7% of monthly gross receipts from foodservice over $5,000.00.

3.3 Reports and Audits. Sublessor shall have the right, at any time during regular business hours, upon notice to Sublessee, to inspect the books of Sublessee for purposes of verifying the accuracy of Sublessee's reports relating to any Rent based on Sublessee's operations. Sublessor shall have the right to cause an audit to be made of Sublessee's books by an independent firm of certified public accountants to be designated by Sublessor for the purpose of confirming the accuracy of the reports submitted by Sublessee. If the audit discloses an underpayment of Rent, Sublessee shall immediately pay to Sublessor the amount of the underpayment with interest at the maximum lawful rate from the date the payment should have been made, plus a late charge for late payment of Rent. Sublessor shall pay the cost of such audit except that if such audit shall disclose that the portion of Rent based on Sublessee's operations for the applicable period exceeds, by 3% or more, such Rent paid by Sublessee, Sublessee shall immediately pay all costs of or related to the audit. The occurrence of a discrepancy in the reporting of such Rent of 3% or more shall constitute a default hereunder. Sublessee acknowledges that its records are subject to audit under this Lease and the Master Lease and must retain its records in contemplation of such occurrence. Sublessee agrees for a period of seven years following the close of its fiscal year to keep at the Premises or at any location in the County where the Marina is located, full and accurate books of accounts and records relative to the transactions in the Premises in accordance with generally accepted accounting principles consistently applied. Without limiting the generality of the foregoing, the following records shall be kept by Sublessee: (a) federal and state income tax returns, (b) state and local sales tax and use tax returns, (c) copies of all sales slips or invoices, (d) bank statements and deposit receipts, (e) paid invoices for purchase of merchandise, (f) merchandising receiving and shipping records, (g) all cash disbursements, cash receipts, sales and purchases, and (h) any other financial information which Sublessor reasonably deems necessary.

3.4 Payment of Rent. Rent payments shall be delivered to Sublessor at Sublessor's address. Checks shall be made payable to the Marina. "Rent" hereunder shall include Basic Rent, Percentage Rent, if applicable, Concession Fees and as "Additional Rent," such other sums and expenses payable by Sublessee on the terms and conditions specified in this Sublease. Rent payable for any fractional portion of a month or year at the beginning or end of the term of this Sublease shall be a like fraction of the Rent due for an entire month or year. If any Rent payment is not received within five days after it is due, Sublessee shall pay a late charge of 5% of such payment, or interest from the date Rent was due at the maximum lawful rate, whichever is greater.

4. Security Deposit. Sublessee has deposited with Sublessor the Security Deposit as security for the full performance and observance of each of Sublessee's obligations under this Sublease. If Sublessee is in default under this Sublease, Sublessor may use the whole or any part of the Security Deposit to satisfy any sum due to Sublessor or to defray any expense or damage reasonably incurred by reason of the default. In the event that all or part of the Security Deposit is so used, Sublessee shall on demand pay to Sublessor a like sum to replenish the Security Deposit. Sublessor is not a trustee of the Security Deposit and may commingle it or use it in ordinary business. No interest shall accrue on it. At the termination of this Sublease or any extension or renewal thereof, if Sublessee is not then in default, Sublessor shall return the remaining balance of the Security Deposit to Sublessee or, at Sublessor's election, to the last assignee of Sublessee's interest. If Sublessor shall transfer its interest in the Marina during the term of this Sublease, Sublessor may pay the Security Deposit to the transferee and Sublessor will then be released from all liability to Sublessee for the return of the Security Deposit.

5. Use.

(a) Sublessee shall operate on the Premises the business described in Section 1 and shall use the Premises for no other purposes without the specific consent of Sublessor, which consent may be withheld in Sublessor's sole discretion. Sublessee shall continuously and at all times actively and diligently operate its business on the Premises in a first class and reputable manner. Sublessee shall employ its best business judgment, efforts and abilities to operate its business on the Premises in an efficient and businesslike manner so as to enhance the reputation and attractiveness of the Premises and the Marina.

(b) No use shall be made or permitted to be made of the Premises, nor any act done, which may increase the existing rates of insurance upon the building within which the Premises are located, or which may cause the cancellation of any insurance policy covering said building or any portion thereof. If any act on the part of Sublessee or use of the Premises by Sublessee shall cause, directly or indirectly, an increase of Sublessor's insurance expense, said additional expense shall be paid by Sublessee to Sublessor upon demand. Such payment by Sublessee shall not limit Sublessor in the exercise of any rights or remedies. Sublessee, at its sole expense, shall comply with any and all requirements pertaining to the use of the Premises, or of any insurance organization or company, which compliance may be necessary for maintenance of reasonable fire, extended coverage, public liability and other insurance upon the building and the appurtenances thereto.

(d) Sublessee shall not commit, or suffer to be committed, any waste or nuisance upon the Premises.

(e) Sublessee shall keep the Premises open for business from a minimum of eight hours per day, which includes lunch time, seven days each week or such other hours as Sublessor and Sublessee may mutually agree.

(e) Sublessee shall not vacate or abandon the Premises at any time during the term of this Sublease. If Sublessee shall abandon, vacate or surrender the Premises, or be dispossessed therefrom by process of law or otherwise, any personal property belonging to Sublessee and left in or upon the Premises shall be deemed abandoned at the option of Sublessor.

(f) Sublessee shall not post or erect any signs at the Premises or elsewhere in the Marina without Sublessor's prior written consent.

6. Compliance with Laws/Hazardous Materials.

6.1 Compliance with Laws. Sublessee shall, at Sublessee's cost and expense, cause the Premises to be used in accordance with all: (a) laws, ordinances, codes, licenses, permits, orders, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency ("Laws") applicable to Sublessee or the Premises, including without limitation, all applicable Laws pertaining to air, water and upland runoff/stormwater quality, fuel storage tanks, Hazardous Materials (as defined below), air emissions and other environmental matters ("Environmental Laws"), all zoning and other land use matters and the Americans with Disabilities Act; (b) similar applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (c) policies of insurance at any time in force with respect to the Premises; and (d) the Marina rules. If Sublessee receives any notice that Sublessee or the Premises is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Sublessee will promptly furnish a copy of such notice to Sublessor.

6.2 Hazardous Materials Upon Premises Prohibited; Indemnity Sublessee shall not have or allow any Hazardous Materials upon, about or beneath the Premises or the Marina, except (i) small quantities of Hazardous Materials commonly used in normal office operations or for premises cleaning and maintenance and used for those purposes by Sublessee and (ii) boat fuel, oils and other fluids contained in the boat in-use fuel tank, engine or other mechanical system. In no event shall Sublessee install, cause or allow any underground or aboveground storage tank or any condition at the Premises that requires a hazardous waste treatment, storage or disposal permit under the federal Resource Conservation and Recovery Act, 42 U.S.C. § § 6901 et seq., or any analogous state or local law. Without limiting the provisions of Section 21.6, Sublessee shall indemnify, defend and hold Sublessor and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company or person harmless from and against any and all Environmental Damages (as defined below). Sublessee's obligation under this Section shall survive the expiration of this Sublease.

6.3 Definitions.

(1) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of a claim, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of (i) any Hazardous Material that comes to be present at or is disposed or of released at or from the Premises during the term of this Sublease, (ii) any Hazardous Material that comes to be present or is disposed of or released at or from the Marina due to Sublessee's action or inaction, or (iii) the breach of any provision of Section 6 of this Sublease involving Hazardous Material or Environmental Laws, including without limitation lost profits, consequential damages (foreseeable or unforeseeable), diminution of property value, claims brought by or on behalf of employees of Sublessee (with respect to which Sublessee waives any immunity to which it may be entitled under any industrial or worker's compensation laws, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or breach of Section 6 as required by law and as necessary to make full economic use of or restore the full economic value of the Premises or any other affected property or otherwise expended in connection with such conditions.

(2) "Hazardous Material" means any substance (i) which is or becomes defined as "hazardous" under any federal, state or local Law, (ii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is or becomes regulated as such by any federal, state or local governmental authority, (iii) the presence of which requires investigation or remediation under any federal, state or local law, (iv) which causes or threatens to cause a nuisance upon or waste to the Premises, the Marina or adjacent properties or threatens to pose a hazard to the health or safety of persons on or about the Marina, or (v) without limitation contains gasoline, oil, diesel fuel or other petroleum products, asbestos or polychlorinated biphenyls (PCB's).

6.4 Obligation to Remediate. Notwithstanding the obligation of Sublessee to indemnify Sublessor pursuant to this Sublease, at Sublessor's option Sublessee shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Sublessee shall take all actions necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. All such work shall be performed by one or more contractors, selected by Sublessee and approved in advance and in writing by Sublessor. Sublessee shall proceed continuously and diligently with such actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Premises and any other affected area. Sublessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Sublessee shall promptly provide to Sublessor copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Sublessee shall permanently seal or cap all monitoring

wells and test holes to industrial s. . ards in compliance with applicable federal, state and loca. and regulations or such more stringent specifications as may be necessary to make full economic use of and restore the full economic value of the Premises and any other affected area, remove all associated equipment, and restore the Premises and any other affected area to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder. Within 10 days of demand therefor, Sublessee shall provide Sublessor with a bond, letter of credit or similar financial assurance evidencing that the necessary funds are available to perform the obligations established by this paragraph.

7. Personnel. All personnel employed by Sublessee shall be clean, neat, courteous and responsive to the needs of boat owners and other customers at all times. Sublessee's employees shall park their personal vehicles only in areas designated by Sublessor. Failure of Sublessee's personnel to comply with the foregoing shall constitute a default hereunder.

8. Alterations. Sublessee shall not make nor suffer to be made any alterations, additions or improvements to or of the Premises or any part thereof without the written consent of Sublessor and Master Landlord.

9. Liens. The interest of Sublessor in the Premises shall not be subject to liens for improvements made by Sublessee. Sublessee will not permit to remain and will promptly discharge, at its cost and expense, all liens, encumbrances and charges upon the Premises or any part thereof. Sublessor shall have and is hereby given authority to enter upon the Premises at any time to post any notices which, in its opinion, shall be necessary to hold Sublessor harmless from any claim or liability arising out of any work done on the Premises. Sublessor may require Sublessee to execute and cause to be recorded a memorandum of this Sublease or such other documents as Sublessor may determine to be necessary to effect such purposes. If Sublessee shall fail to discharge such liens as aforesaid, then, in addition to any other right or remedy of Sublessor, Sublessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien, by depositing in court or by giving security or in such other manner as is or may be prescribed by law. Any amounts paid by Sublessor for any of the aforesaid purposes and all reasonable expenses of Sublessor, including counsel fees, with interest thereon at rate of the lesser of 12% per annum or the maximum rate allowed under the law, from the date of payment, shall be repaid by Sublessee to Sublessor on demand and if unpaid, may be treated as Additional Rent.

10. Assignment and Subletting. Sublessee shall not sublet, assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease or any interest therein, without the prior written consent of Sublessor, which Sublessor may give in its sole discretion, and, if required by the Master Lease of Master Landlord. A change in the control of Sublessee shall constitute a transfer for purposes of this Sublease. A consent to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Any such assignment or subletting without such consent shall be void, and shall, at the option of Sublessor, terminate this Sublease. In any event, Sublessor's consent to any assignment or subletting shall not relieve Sublessee from any obligation under this Sublease. In the event of default of any assignee of Sublessee in the performance of any of the terms hereof, Sublessor may proceed directly against Sublessee without the necessity of exhausting remedies against such assignee.

11. Maintenance. Sublessor shall maintain the structural soundness of the Premises, which portions are limited to foundation, exterior walls and roofs. Sublessee shall, at Sublessee's sole cost and expense, maintain all other portions of the Premises and every part thereof in good, neat and sanitary condition and repair, at all times free from trash and rubbish. Sublessee shall repair all damage to the Premises resulting from use and wear by Sublessee. Sublessee shall be responsible for the repair or replacement of any broken windows or doors and shall maintain and repair all equipment within the Premises, all heating, ventilating and air conditioning equipment and all electrical facilities within the Premises. All repairs and replacements made by Sublessee under this Section or the Section entitled "Damage to Premises" shall be made under the supervision and with the approval of Sublessor, and shall be of a quality equal to the original work. At the reasonable request of Sublessor, Sublessee, at Sublessee's expense, shall remedy any condition on the Premises not in keeping with the pleasing appearance of the Marina. Sublessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Sublessee the right to make repairs at Sublessor's expense or would terminate this Sublease due to Sublessor's failure to keep the Premises in good order, condition and repair. If Sublessee fails to perform its obligations under this Section or the Section entitled "Damage to Premises," Sublessor may, at its option (but shall not be required to), enter upon the Premises, after five days' prior written notice to Sublessee, and put the same in good order, condition and repair and the cost thereof together with interest at the maximum lawful rate shall become due and payable as Additional Rent to Sublessor upon its demand.

12. Taxes. Sublessee shall pay, ten days prior to delinquency, all taxes, assessments, license fees and public charges levied for or during the term of this Sublease against or on Sublessee's business operations, trade fixtures, leasehold improvements, merchandise or any personal property in possession of Sublessee, or installed by or for Sublessee, in, upon or about the Premises and for any real property taxes assessed with respect to the Premises. Such obligation is assumed by Sublessee whether such assessment is made against Sublessee in the first instance or is made against Sublessor. If the Premises are not separately assessed by the local assessing authority, then Sublessor shall allocate the real property taxes between the various elements of the Marina or the Premises on an equitable basis. Sublessee shall pay and hold Sublessor harmless from all sales taxes payable on account of this Sublease and Sublessee's sales made pursuant to this Sublease.

13. Surrender Upon Expiration or Termination. Sublessee shall, upon the expiration or earlier termination of this Sublease for any reason as provided herein, immediately and without notice from Sublessor, surrender and deliver up the Premises in such condition as may be consistent with the performance of all the Sublessee's obligations in this Sublease and shall deliver all keys to Sublessor. Unless Sublessor requires their removal, all alterations, improvements, additions and fixtures upon the Premises shall be the property of Sublessor upon the expiration or earlier termination of this Sublease.

14. No Abatement. No abatement of Rent or other compensation shall be claimed or allowed for loss, inconvenience or discomfort arising from the making of repairs, alterations or improvements to any areas within the Marina, including the Premises.

15. No Representations. Sublessee hereby specifically covenants that all of the terms of this Sublease have been fully and completely set forth herein and no promises or representations have been made by Sublessor or any of its agents or representatives except as specifically set forth herein. No surrender of this Sublease on Sublessee's part, and no modification or waiver by Sublessor of any of the terms hereof, shall be binding upon Sublessor unless in writing signed by a general partner of Sublessor.

16. ding Over. If, with Sublessor's consent, Sublessee holds ession of the Premises after the termination or expiration of this ...blease, Sublessee shall become a Sublessee from month to ...th on the same terms and conditions contained herein except that Basic Rent shall be increased by 12%.

17. Entry by Sublessor. Sublessor and its authorized partners and employees shall be permitted during the term of this Sublease to visit and inspect the Premises during normal business hours. Sublessor shall not enter the Premises without cause and prior notice to Sublessee outside of normal working hours. However, in the event of an emergency requiring immediate admission, if Sublessee shall not be personally present to open and permit an entry into the Premises, Sublessor or its agents may forcibly enter the same without rendering Sublessor or such agents liable to any claim or cause of action for damages by reason thereof and without in any manner affecting the obligations and covenants of this Sublease.

18. Default by Sublessee: Remedies.

18.1 Default. The following shall constitute a default by Sublessee under this Sublease:

(i) Any failure to pay Rent when due.

(ii) Any failure to perform the services and obligations agreed to be performed by Sublessee pursuant to the Section entitled "Use," if such failure is not cured within ten days after notice from Sublessor as to such failure.

(iii) Any breach of any other covenant or agreement of Sublessee contained herein where Sublessee does not commence and proceed diligently to cure such breach within 30 days after notice from Sublessor as to such breach.

(iv) Any abandonment of the Premises by Sublessee.

(v) The filing by Sublessee of a voluntary petition in bankruptcy, or the adjudication of Sublessee as bankrupt or insolvent, or the filing by Sublessee of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy or insolvency or a general assignment by Sublessee for the benefit of creditors.

Sublessor may, at its option (but shall not be required to), cure any default by Sublessee and any costs incurred by Sublessor in so doing, together with interest at the maximum lawful rate, shall become due and payable as Additional Rent to Sublessor upon demand.

18.2 Remedies. In the event of any default or breach by Sublessee, Sublessor may at any time thereafter, in Sublessor's sole discretion, with or without notice or demand and without limiting Sublessor in the exercise of a right or remedy which Sublessor may have by reason of such default or breach do any one or more of the following:

(i) Terminate Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Premises to Sublessor. In such event, Sublessor shall be entitled to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges and adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Sublessee proves could be reasonably avoided, and that portion of any leasing commission paid by Sublessor and applicable to the unexpired term of this Sublease. Unpaid installments of Rent or other sums shall bear interest from the date due at the maximum legal rate.

(ii) Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Premises. In such event, Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover the Rent and any other charges and adjustments as may become due hereunder.

(iii) pursue any other legal remedy now or hereafter available to Sublessor under the laws of judicial decisions of the State of Florida.

19. Damage to Premises.

19.1 Damage to Structure of Premises. If the structure of the Premises, i.e. roof, foundation or exterior walls, shall be partially damaged by fire, storm or other casualty, repair shall be made by Sublessor with reasonable dispatch. In the event of the substantially total destruction of the structure of the Premises by fire or otherwise, or if the damage shall be so extensive that it cannot, in the opinion of Sublessor, be repaired within three months from the date of such damage, then at Sublessor's option the Rent shall be paid only up to the time of such destruction or damage and this Sublease and the term thereof shall thereupon cease, except that Sublessee shall be and continue to be liable for any destruction or damage caused or permitted by Sublessee. Notwithstanding the other provisions of this Section, Sublessor shall not be obligated to incur any repair or reconstruction expense for the structure of the Premises in excess of the proceeds of any insurance policy maintained by Sublessor payable to Sublessor for such expense. Sublessor shall have no obligation to repair or rebuild any of Sublessee's fixtures, equipment, tenant improvements or personal property and Sublessor shall not be liable for any loss or damage to any such property suffered by Sublessee. Notwithstanding the provisions of the Section entitled "Maintenance" and this Section, Sublessee shall pay the cost of repair and replacement due to damage or injury done to the structure of the Premises by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees. Sublessee shall pay such amount to Sublessor upon demand as Additional Rent, plus interest at the maximum lawful rate from demand until payment.

19.2 Nonstructural Damage to Premises. In the event that the Premises (other than the roof, foundation or exterior walls), or any of Sublessee's fixtures, equipment, tenant improvements or personal property are damaged or destroyed, Sublessee shall, at its sole expense, repair or replace such damage or destruction as soon as reasonably possible and this Sublease shall continue in full force and effect. Sublessee waives the benefit of any law which provides that a lease terminates upon the destruction of the thing which is leased.

20. Waiver of Claims. Sublessor shall not be liable to Sublessee and Sublessee hereby waives all claims against Sublessor for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever other than resulting from the willful misconduct or negligence of Sublessor or its employees.

21. Insurance.

21.1 Liability Insurance. Sublessee shall, at its sole expense, obtain and keep in force and effect a policy of combined single limit, bodily injury and property damage insurance against any liability arising out of the conduct of Sublessee's business and the ownership, use, occupancy or maintenance of the Premises, all areas appurtenant thereto, and the Marina. The policy shall insure performance by Sublessee of the indemnity provisions of this Sublease and shall include premises/operations, product liability, independent contractors and personal injury liability coverages. Such insurance shall be a combined single limit policy in an amount not less than $1,000,000. Metropolitan Dade County must be included as additional insured with respect to this coverage.

21.2 Property Insurance. Sublessee shall, at its sole expense, obtain and keep in force during the term of this Sublease, a policy of insurance covering loss or damage to: (i) the Premises (other than the structure of the Premises, i.e., roof, foundation or exterior walls) unless such loss or damage is caused by the negligence or willful misconduct of Sublessor or Sublessor's agents, employees, contractors, licensees or invitees; (ii) the structure of the Premises, if such loss or damage is caused by Sublessee or Sublessee's agents, employees, contractors, licensees or invitees; and (iii) Sublessee's fixtures, equipment, tenant improvements and personal property on the Premises against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage. Such policy shall be in the amount and on the terms reasonably required by Sublessor.

21.3 Workers' Compensation and Employer's Liability. Sublessee shall maintain workers' compensation insurance for all of Sublessee's employees who work on the Premises in compliance with state regulations. Workers' compensation insurance shall include Longshoreman Harbor Workers Act coverage and maritime law coverage. Sublessee shall maintain employer's liability insurance in an amount that is the greater of $100,000 or the amount required by applicable statutes.

21.4 Insurance Policies. The insurance required hereunder shall be procured from a responsible insurance company or companies authorized to do business in the State where the Marina is located and satisfactory to Sublessor. Each policy shall name Sublessor, Master Landlord, Westrec Marina Management, Inc. and any lenders holding mortgages on Sublessor's interest in the Marina as additional insureds and shall include loss payable clauses satisfactory to Sublessor. Each policy shall state that the insurance is primary over any insurance carried by Sublessor. Sublessee shall deliver to Sublessor the originals or certificates of all insurance policies required to be carried by Sublessee pursuant to this Section at least 30 days prior to: (i) the beginning of the initial Sublease term; and (ii) the expiration of any policy or policies being replaced during the term of the Sublease, together with evidence that the premiums therefore have been paid. All policies shall contain an endorsement prohibiting cancellation of coverage, reduction in coverage or any other modification except after 15 days prior written notice to all parties in interest.

21.5 Waiver of Subrogation. Sublessor and Sublessee each hereby waive any and all rights for recovery against the other or against the officers, employees, agents and representatives of the other for loss of or damage to such waiving party's property or the property of others under its control to the extent that such loss or damage is insured under any insurance policy in force at the time of such loss or damage. Sublessee shall, upon obtaining the policies and insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease.

21.6 Indemnity. Sublessee shall indemnify and hold each of Sublessor, all persons and companies affiliated with Sublessor, and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company or person (the "Indemnitee") harmless from and against all cost, loss, expense, suits, judgements, claims or liability (including attorneys' fees) (collectively, the "Claims") arising from Sublessee's use of the Premises and/or the Marina and from the conduct of Sublessee's business or from any activity, work or thing done, permitted or suffered by Sublessee in or about the Premises and/or the Marina or elsewhere and from any breach or default in the performance of any obligation on Sublessee's part to be performed under the terms of this Sublease (including Sublessee's noncompliance with any laws, as provided in Section 6), except to the extent the Claim arises from the willful misconduct or negligence of the Indemnitee. If any action or proceeding is brought against the Indemnitee by reason of any such Claim, Sublessee shall, upon notice from the Indemnitee, defend the same at Sublessee's expense by counsel satisfactory to the Indemnitee. This Section shall survive termination of this Sublease.

21.7 Insurance Required by Master Lease. If the Master Lease requires any insurance to be maintained with respect to the Premises in addition to the policies required above, Sublessee shall maintain such insurance.

22. Sublessor's Liability. Sublessee shall look solely to the estate of Sublessor in the Marina, subject to the rights of any mortgagee in respect of the Marina, for the collection or satisfaction of any judgment or other judicial process requiring the payment of money by Sublessor in the event of any default by Sublessor under this Sublease or any breach by Sublessor of any duties relating to this Sublease or the Premises; and no other property of Sublessor shall be subject to levy, execution or other procedures for the satisfaction of Sublessee's remedies.

23. Eminent Domain. In the event all or any part of the Premises are taken by reason of any exercise of the power of eminent domain, whether by a condemnation proceeding or otherwise, then this Sublease shall terminate as of the date of such taking or transfer. Sublessor shall be entitled to all awards and to all purchase monies attributable to the Premises, except as to any part of the award attributable to the improvements installed in the Premises at Sublessee's cost, which said part shall be payable to Sublessee.

24. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Sublease, the prevailing party shall be entitled to recover, for the reasonable fees of its attorneys in such action or proceeding. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations therewith, whether or not a legal action is subsequently commenced in connection with such default.

25. ver. The failure of Sublessor to insist in any one or more ances upon strict performance of any of the covenants of this ease shall not be construed as a waiver or relinquishmen he future of such covenant, rule or regulation, but the same shall continue and remain in full force and effect. The receipt by Sublessor of Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Sublessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Sublessor. Even though Sublessor shall consent to an assignment hereof, no further assignment shall be made without express consent in writing by Sublessor. The delivery of keys to the Sublease Premises to any officer or employee of Sublessor or to Sublessor's agent shall not operate as a termination of this Sublease or as a surrender of the Premises.

26. Notices. Communications relating to this Sublease shall be in writing and shall be delivered personally, sent by United States mail, first class postage prepaid, by telecopy, or by private messenger or courier service, to the parties or their assignees at the addresses as set forth in Section 1. A party may change these addresses by written notice to the other delivered in accordance with this Section. If a communication is mailed under this provision, it shall be deemed received on the earlier of: (i) five business days after it is mailed; or (ii) the date it is actually received. A communication by any other method permitted under this Section shall be effective when actually received.

27. Successors and Assigns. This Sublease and every provision hereof shall bind, apply to and run in favor of Sublessor, its successors and assigns, and of Sublessee and the successors and assigns of Sublessee. The term "Sublessor" as used herein shall mean only the owner or owners at the time in question of the interest in the Premises which Sublessor currently holds and in the event of any transfer of such interest, Sublessor herein named (and in case of any subsequent transfers the then transferor) shall be relieved from and after the date of such transfer of all liability with respect to Sublessor's obligations thereafter to be performed. The obligations contained in this Sublease to be performed by Sublessor shall be binding on Sublessor's successors and assigns only during their respective periods of ownership.

28. Estoppel Certificate. Sublessee shall at any time upon not less than ten days' prior written notice from Sublessor execute, acknowledge and deliver to Sublessor a statement in writing: (i) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect) and the date to which Rent and other charges are paid in advance, if any; and (ii) acknowledging that there are not, to Sublessee's knowledge, any uncured defaults on the part of Sublessor hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of the Premises. At Sublessor's option, Sublessee's failure to deliver such statement within such time shall be material breach of this Sublease or shall be conclusive upon Sublessee: (i) that this Sublease is in full force and effect, without any modification except as may be represented by Sublessor; (ii) that there are no uncured defaults in Sublessor's performance; and (iii) that not more than one month's Rent has been paid in advance.

29. Subordination. Sublessee agrees that this Sublease, at Sublessor's option, shall be subordinated to any mortgage or deed of trust, whether presently encumbering the Premises, or which may hereafter be placed on the Premises, and to any advances to be made thereunder, any interest thereon and all renewals, replacements and extensions thereof, provided that such mortgagees or beneficiaries first request such subordination and thereafter agree in writing to recognize this Sublease in the event of foreclosure and for so long as Sublessee is not in default. Sublessee shall execute and deliver, without cost to Sublessor, whatever instruments may be required to effect such subordination, including an agreement to attorn to any mortgagee or beneficiary under any deed of trust or any purchaser at a foreclosure sale or any transferee by deed in lieu of foreclosure.

30. Sublessor's Assignment. Sublessor shall have the right to assign all or any portion of its rights under this Sublease to any other entity. If Sublessor so assigns its rights under this Sublease, such assignee shall become Sublessor hereunder.

31. Joinder. Sublessee agrees that, upon written request from Sublessor, Sublessee will promptly join in all applications for permits, licenses or other authorizations required by any governmental agencies or other body claiming jurisdiction in connection with any work which Sublessor may desire to undertake.

32. Miscellaneous. This Sublease is governed by the laws of the state in which the Marina is located and any question arising hereunder shall be construed or determined according to such law. Headings at the beginning of each numbered Section of this Sublease are solely for the convenience of the parties and are not a part of this Sublease. Time is of the essence of this Sublease. If any provision of this Sublease is or is held to be invalid or unenforceable, then to the extent possible all of the remaining provisions of this Sublease shall remain in full force and effect and shall be fully binding upon the parties hereto. Any modification to this Sublease must be in writing and must be consented to by Master Landlord. This Sublease is the entire agreement of the parties and supersedes all prior agreements, negotiations or understandings between the two parties with respect to the subject matter of this Sublease.

33. Joint and Several Liability. If Sublessee consists of more than one party, each party comprising Sublessee shall execute this Sublease on behalf of Sublessee and shall be fully liable for all of Sublessee's obligations hereunder, such liability being deemed to be joint and several on the part of Sublessee and the parties executing on behalf of Sublessee.

34. Sublessor's Construction. Sublessor shall construct at its own expense, within thirty days after execution of the Sublease the following improvements:

a) New double store front doors in the Premises.
b) A dividing wall built of lattice to separate the restaurant and retail store. A closeable entrance between the Premises and retail store shall be build by Sublessor. This entrance shall be open when both the Sublessor and Sublessee are present and open for business.

35. Sublessee's Business Conduct. Sublessor considers the manner in which Sublessee's conduct of business to be important considerations for this Sublease. The cleanliness of both the interior and exterior of the Premises shall be such that Sublessor and Sublessor's customers are confident that the Premises are being maintained in a healthful, eye pleasing manner. Any condition which exists that exhibits otherwise will be brought to Sublessee's attention in writing and must be corrected within 72 hours. Sublessee shall operate its business in a manner that is compatible with and shall not interfere with Sublessor's and Sublessor's customer's quiet enjoyment of the Marina and the family atmosphere of the Marina. The Premises shall operate as a family eating establishment where families with children are comfortable.

36. Construction of Improvements,

36.1 Tenant Improvements. Within 90 days after the commencement date of this Sublease, Sublessee shall construct, at Sublessee's expense, all major improvements, repairs and renovations which Sublessee desires to make to the Premises ("Tenant Improvements").

36.2 General Construction Standard. All Tenant Improvements shall be built to Sublessor's satisfaction and in accordance with applicable building codes. The Tenant Improvements shall be constructed in good and workmanlike manner in accordance with all requirements of all governmental departments, boards, bureaus, officials and authorities having jurisdiction . All necessary permits for such construction shall be obtained by Sublessee at Sublessee's sole expense. Sublessor shall use its best efforts to assist Sublessee in obtaining necessary permits for construction.

36.3 Design and Construction. Any Tenant Improvements shall be in conformance with the design and architectural parameters of the Marine Center Building, including, but not limited to, color, material, structure, theme and ambiance parameters.

36.4 Construction Approvals. Sublessee shall submit all preliminary plans and specifications for any planned Tenant Improvements to Sublessor for Sublessor's written approval prior to the start of any construction. Any plans and specifications for major work or structural changes shall be prepared by a duly qualified architect licensed in the State of Florida and paid for by Sublessee for that purpose. Sublessor's approval shall not constitute an assumption by the Sublessor of any liability for the design, engineering or structural integrity of the Tenant Improvements proposed to be erected by Sublessee. Any disapproval by Sublessor shall specify in detail the reason for such disapproval.

36.5 Liens and Claims. The interest of Sublessor in the Subleased Premises shall not be subject to liens for Tenant Improvements made by Sublessee. Sublessee shall not suffer or permit to be enforced against any portion of the Premises any mechanics' materialmen's, contractors' or subcontractors' liens arising from, or any claim for damage growing out of, the work of any construction, repair, restoration, removal, replacement or improvements, or any other claim or demand howsoever the same may arise. Sublessee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Premises or Tenant Improvements. Sublessee agrees to and hereby does indemnify, defend and hold Sublessor, and the Premises, free and harmless from all liability for any and all such liens, claims, demands and actions (collectively, the "Liens"), together with reasonable attorneys' fees and all cost and expenses in connection therewith.

37. Outside Deck. Sublessee may have nonexclusive use of the outside deck surrounding the restaurant ("Outside Deck") to provide food service to Sublessee's customers as depicted on Exhibit C. Sublessor and its customers shall have the same access and use of the Outside Deck. Sublessee's use of the Outside Deck shall not restrict Sublessor's use, pedestrian access, or in any way obstruct traffic flow to all areas of the Marina.

38. Sublease Extension. Provided Sublessee is not or has not been in default under the Sublease, at the end of the term of the Sublease, Sublessor and Sublessee will negotiate in good faith to extend the term of the Sublease for a minimum of one year on terms that are reasonably satisfactory to both Sublessee and Sublessor, with rent not to exceed $1,500 per month.

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IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Sublease as of the date below their signature below, to be effective as of the date set forth at the beginning of this Sublease.

"SUBLESSOR"

WESTREC EQUITIES, INC.,
A California Corporation

Witness

By: _____
Michael P. Robbins, Vice President

Witness

Date: 8/6/97

"SUBLESSEE"

Witness

_____ 8/7/97
Chris Rice Date

Witness

The undersigned hereby consents to this Sublease.

In consenting to this Lease, Landlord does not amend, modify, release or waive any of the terms and conditions of the original Lease. In the event of any conflict between the original Lease and this sublease, the terms of the original Lease shall govern.

"MASTER LANDLORD"

Metropolitan Dade County

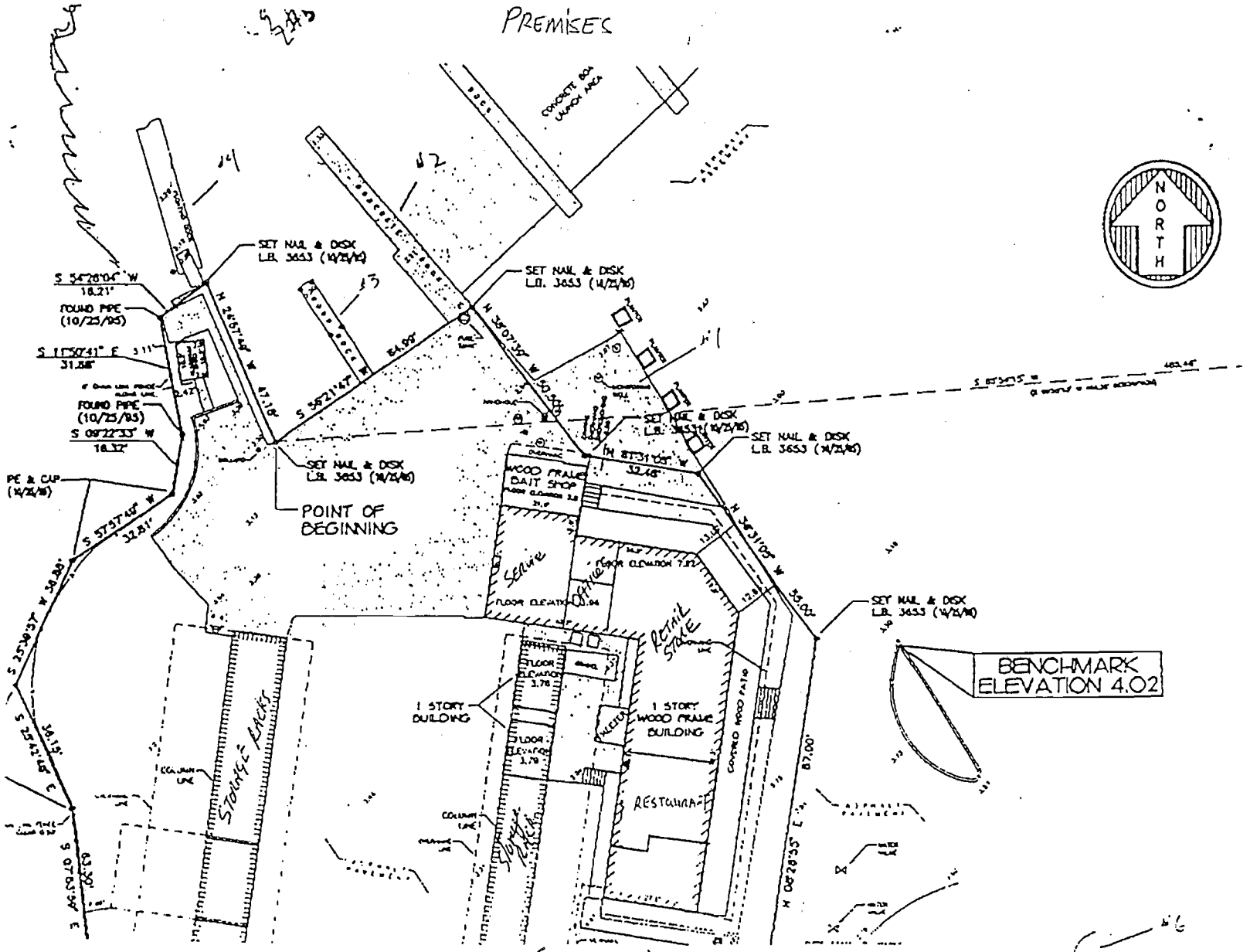
By: _____

Name: Armando Vidal, P.E.

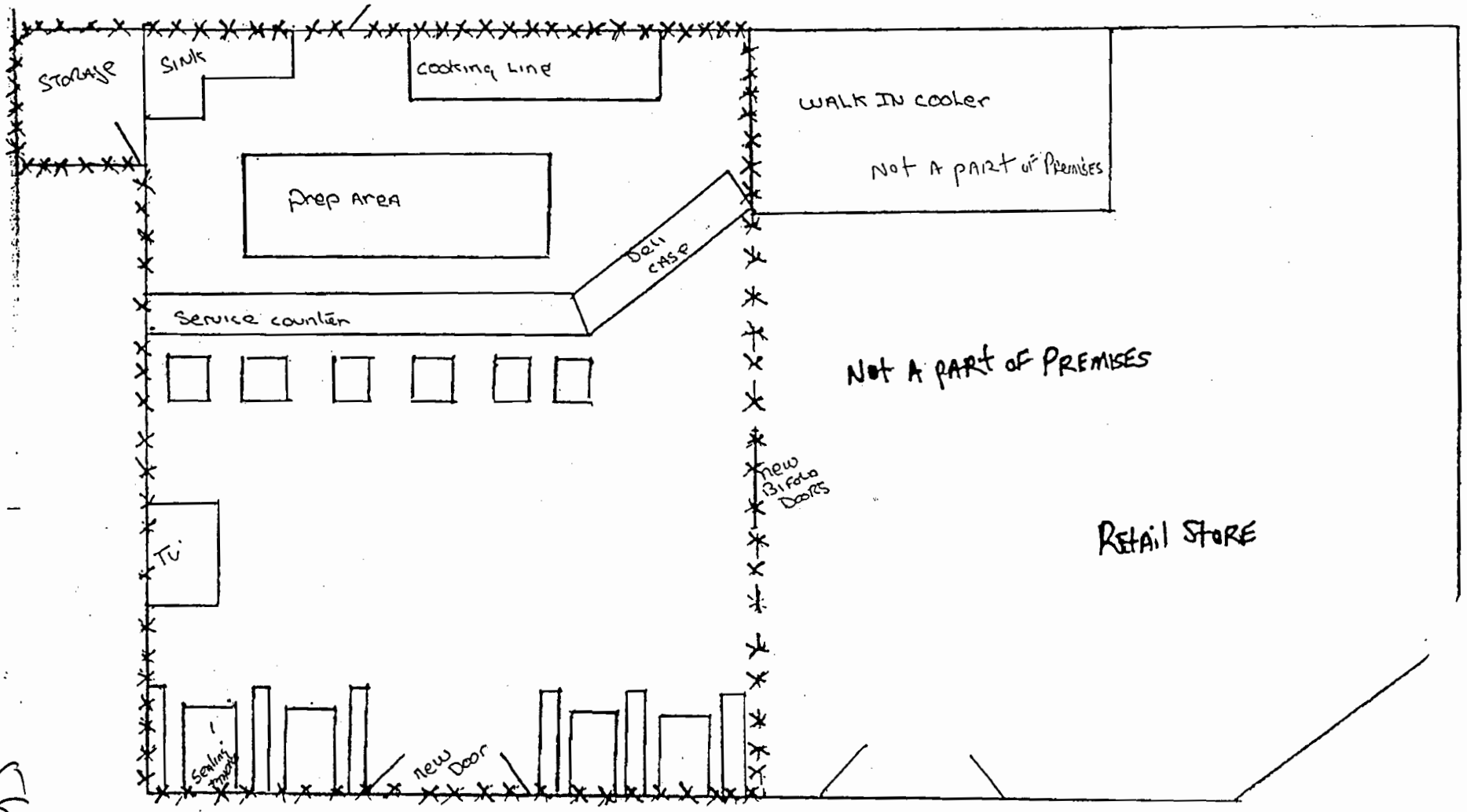
Title: County Manager

Date: November 5, 1997

DEPUTY CLERK



(Exhibit A) page 1 of 2



RESTERAUNT INTERIOR

Not to Scale

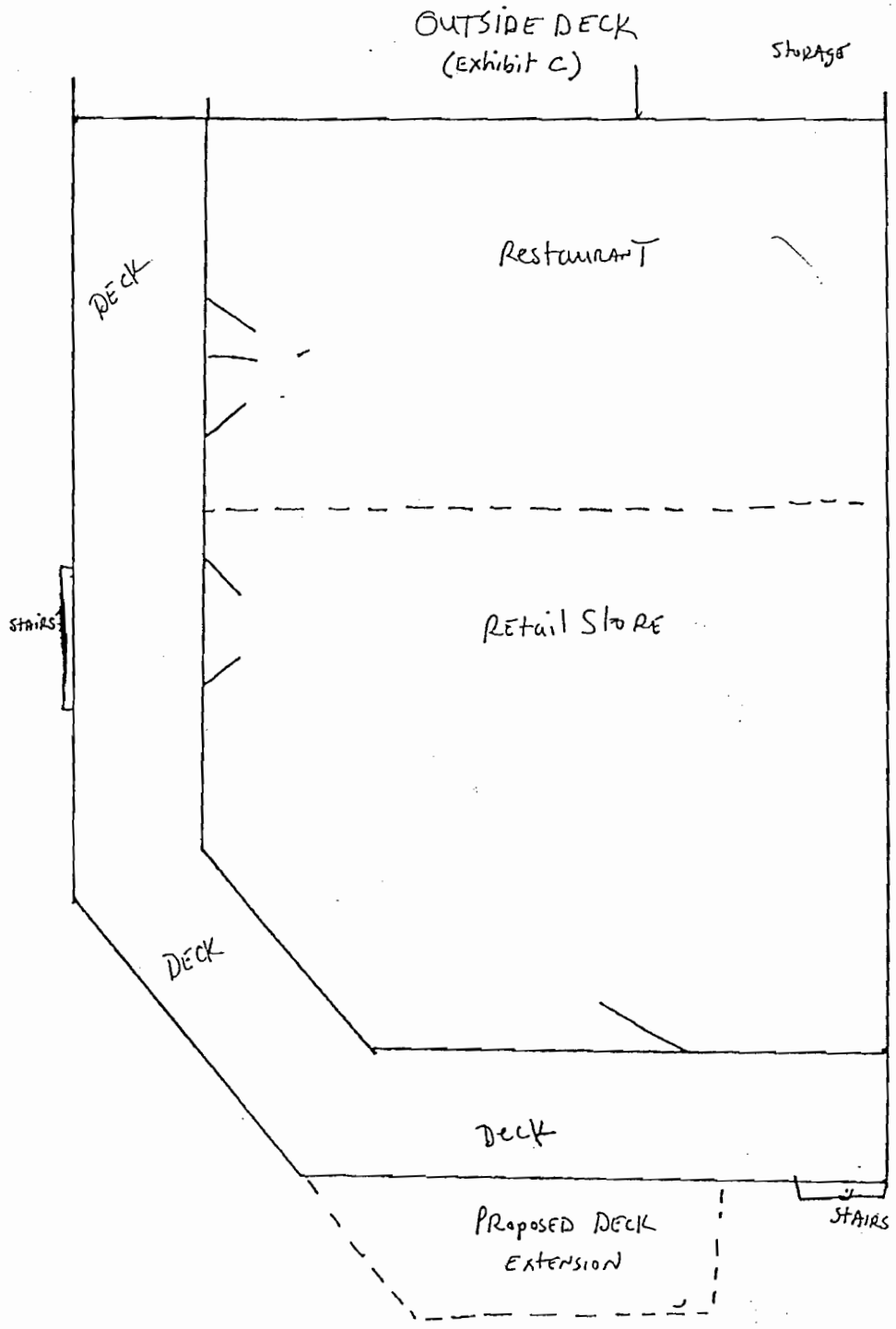
XXX denotes PREMISES

(Exhibit A) page 2 of 2

Personal Property List

1	McCray Commercial Refrig/Freezer	serial # 87368227	model # SC-CDS-35-8
1	Hobart Slicer Machine	serial # 56-851-730-LH	model # 1612
1	Coca Cola Dispensing Machine	serial # J9511K07093	model # CB23235L6
	Coca Cola Ice Machine	serial # ZS 1111116S	item code # 42233
1	Bunn O Matic Coffee Maker	serial # STF0027965	model # STF-15
1	Espresso Comobar Machine	serial # 12286	model # XL
1	Cappuccino machine	serial # 3270	model # APV1
1	Bunn O Matic Iced Tea Machine	serial # T000004388	model # T3-20230-0000
1	Crystal Tips Ice Maker Machine	serial # 132356-01M	model # BRS-725
1	Fogel R-22 Refrigerant	serial # PR-43311-943	model # CR-25-US
1	TMC True Freezer	serial # 11486118	model # TWT-48F
1	Panasonic Microwave	serial # AW230702372	model # NN-5462A
1	Eagle Food Service Triple Steamer	serial # 9511100186	model # DHT3-120
1	TMC True Refrigerator and Lunch Setup Top	serial # 11400244	model # TSSU-48-12
1	Eagle Wyatt Grill Machine (Charcoal)		
1	Vulcan Grill, Stove and Oven		
1	Vulcan Deep Fryer (2)	serial # 481099731	model # FF3
1	Electromaster	serial # 1547	model # SAS
1	Eagle Table under Electromaster		
1	Triple Sink - Drop In		
1	Banner Equipment / Draft Beer Dispenser	- Budweiser and Bud Light	
1	Light Warmer from American Permanent Ware	serial # 9410-119	model # DW-12
1	Detecto Weight Machine	serial # 9001-25D	model # PC-30A
1	NEC Video Recorder/Player	serial # C9Y00871	
1	Trackersat Descramber	serial # 114329A	
1	60 inch RCA Television	serial # 7460396AZ	
3	17 inch Zenith Televisions	serial #'s 922-14490077, 925-18630133, 941-18632177	
1	Range Hood and Exhaust Fan		
1	Scott Paper Towel Dispenser		
1	Sani Fresh Hand Soap Dispenser		
1	Sanitation Sink		
1	Storage Shelves (7)		
1	Desk with Drawer		
1	Desk (no Drawer)		
1	Keter Plastic Storage Shelf		
1	Pyro-Chem Fire Extinguisher		
1	Amerex Fire Extinguisher		
3	Sysco Aluminum Spatulas		
1	Set of 4 Sysco Sauce Pots		
1	Set of 4 Sysco Fry Pans		
1	Proctor Silex Toaster		
1	Set of 9 Super Pans		
1	Set of 2 Stowaway Containers		
1	12 inch Stainless Steel Strainer		
2	14 inch Stainless Steel Strainer with Base		
1	Stainless Steel 3 part Component Containers		
1	Set of 3 18x12 inch Super Pans		
1	Set of 3 Glass Cake Tray		
1	16 inch Stainless Steel Strainer with Base		
1	1 Speed Bar Blender with two tops		
4	Royal Cup Coffee Maker Mugs		

Exhibit B


OUTSIDE DECK
(Exhibit C)
STORAGE
RESTAURANT
DECK
STAIRS
RETAIL STORE
DECK
DECK
PROPOSED DECK
EXTENSION
STAIRS

NOT TO SCALE

RESOLUTION NO. R-409-95

RESOLUTION APPROVING AN ASSIGNMENT AND AMENDMENT OF LEASE TO WESTREC EQUITIES, INC., SUBJECT TO EXECUTION BY WESTREC EQUITIES, INC., IN ACCORDANCE WITH BANKRUPTCY COURT RULING, AUTHORIZING EXECUTION OF SAME AND, AFTER REVIEW BY THE COUNTY ATTORNEY, OTHER DOCUMENTS IN FURTHERANCE OF THIS ACTION; WAIVING FORMAL BID PROCEDURES AND PROVISIONS OF ADMINISTRATIVE ORDER NO. 3-2 IN CONJUNCTION WITH THE PURCHASE OF FUEL FROM LESSEE IN AN AMOUNT NOT TO EXCEED $20,000 PER YEAR

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board finds that it is in best interest of Dade County to:

Section 1. Approve the assignment and amendment of Lease from Haulover Resort Marina, Inc. to Westrec Equities, Inc., subject to execution by Westrec Equities, Inc., in substantially the form attached hereto and made a part hereof;

Section 2. Authorize the County Manager to execute same and, after review by the County Attorney, additional documents in furtherance of the assignment and amendment of Lease by and for Dade County and to exercise the renewal and termination provisions contained therein; both items 1 and 2

are in accordance with the ruling of the Bankruptcy Court in this matter;

Section 3. Waive formal bid procedures and the provisions of Administrative Order 3-2 in conjunction with the purchase of fuel from the lessee in an amount not to exceed $20,000 per year, formal bidding being waived in this instance pursuant to Section 4.03(D) of the Home Rule Charter by two-thirds (2/3) vote of the Board members present; and

Section 4. Direct the Clerk to record all appropriate documents in connection with this resolution.

The foregoing resolution was offered by Commissioner Natacha S. Millan, who moved its adoption. The motion was seconded by Commissioner Arthur E. Teele, Jr. and upon being put to a vote, the vote was as follows:

James Burke	aye	Miguel Diaz de la Portilla	absent
Betty T. Ferguson	aye	Maurice A. Ferre	absent
Bruce Kaplan	aye	Gwen Margolis	aye
Natacha S. Millan	aye	Dennis C. Moss	aye
Alexander Penelas	aye	Pedro Reboredo	aye
Katy Sorenson	aye	Javier D. Souto	absent
Arthur E. Teele, Jr.	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of April, 1995.

DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MEMORANDUM

Agenda Item No. 5(A)(4

TO Honorable Chairperson and Members
Board of County Commissioners

DATE April 4, 1995

FROM Armando Vidal, P.E.
County Manager

SUBJECT Assignment and Amendment of Lease To Westrec Equities, Inc.

RECOMMENDATION

It is recommended that the Board approve the assignment and amendment of Lease with Haulover Resort Marina, Inc. to Westrec Equities, Inc. in accordance with the Bankruptcy Court ruling and authorize the County Manager to execute documents in conjunction with this matter.

BACKGROUND

In 1987, the County sought the development and operation of a boat storage facility at Haulover Beach Park through a Request for Proposals. Several parties responded and a Lease Agreement was awarded to Gold Coast Racks, Inc., the best proposer (Reso. No.R-1051-88). The company built the rack structure and ancillary buildings at a higher cost than expected. Gold Coast Racks, Inc. requested approval to reorganize the company. The County approved the restructuring among the original owners, an assignment of the Lease to the new company, Haulover Resort Marina, Inc., and gave the company the right to do one-time leasehold mortgaging (Reso. No. R-1393-89). The business was a marginal success.

In 1990, the lessee bought out the equipment of a former tenant for the County, donated it to the County and the Lease was amended to expand the business by adding the second bait, tackle and fuel operation at the park. The rent was increased for the new facility and the lessee was given a rent credit for the amount of the equipment buyout (Reso. No. R-1029-90). The lessee was later granted an acceleration of the rent credit so that the remaining balance was fully credited to some outstanding arrearages (Reso. No-1110-91).

By a separate agreement, the County was granted the right to purchase fuel for County vessels and offroad equipment from the lessee in an amount not to exceed $20,000 per year. This separate agreement expires February 4, 1996 (Reso. No. R-91-91).

In January, 1994, Haulover Resort Marina, Inc., owing a substantial amount to many vendors, in arrears on their bank loan and County rent, filed for protection under Chapter 11 of the Bankruptcy Code. Since that time, the company has sought to sell its assets and resolve its indebtedness.

The operator, even under Bankruptcy protection, fell further behind on payments. Earlier this year, a large marina management company, Westrec Marina Management, Inc. took over the operation under a court appointed trustee. Westrec Marina Management, Inc. made all current payments and offered Haulover Resort Marina, Inc. (the lessee and debtor-in-possession) and the Bankruptcy Court a plan to take the operation out of bankruptcy. The plan required several accommodations to establish a viable enterprise. These included the restarting of the lease term from the beginning of its ten year initial term and the continuation of the right to renew the lease for two five-year periods. Westrec Equities, Inc. ("Westrec"), the subsidiary of Westrec Marinas, Inc. that will handle this lease, has agreed to provide (1.) not less than $300,000 in improvements during the first two years; (2.) donate all new and existing improvements to the County; (3.) pay all arrearages in rent to the County on a schedule as follows: (a.) $36,000 initial payment; (b.) $1,000 per month in addition to all current amounts due; (c.) late fees on the unpaid balance at the rate of 1.5% per month; (d.) payment of all outstanding amounts, if any, at the end of the initial period. The payment schedule will be guaranteed by a Promissory Note from the parent company.

In essence, the County will recoup all outstanding payments over the initial term of the Lease. Payments are guaranteed by a large, professional marina operator. The site will be improved at a cost of at least $300,000. County agencies can purchase fuel for its vessels and offroad equipment at lessee's cost plus $0.05 per gallon. And most importantly, the public will again receive the services intended from this project.

ASSIGNMENT AND AMENDMENT OF LEASE

THIS ASSIGNMENT AND AMENDMENT OF LEASE, made this first day of MAY, 1995, by and between METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida (the "County") and WESTREC EQUITIES, INC., a California corporation registered and authorized to do business in the State of Florida through Certificate No. F95000001054, ("Westrec" or "Lessee"),

WITNESSETH

WHEREAS, the County entered into a Lease Agreement with Gold Coast Racks, Inc. for the development and operation of boat storage, bait and tackle, fuel sales and related services pursuant to public bidding and awarded by County Resolution No R-1051-88, July 19, 1988(the "Lease"); and

WHEREAS, the Lease was amended by Addendum on November 21, 1989 to assign the Lease from Golf Coast Racks, Inc. to Haulover Resort Marina, Inc., which Addendum also allowed a one time leasehold mortgaging (Reso. No. R-1393-89): and

WHEREAS, the Lease was further amended on September 25, 1990 to include the bait and tackle and fuel facilities at a southerly location in Haulover Beach Park, increase rent by $1500 per month and grant a waiver of that rent for 36 months in exchange for a $54,000 donation to the County (Reso. No. R-1029-90); and

WHEREAS, the Lease was amended on October 1, 1991 to apply the remaining rent waiver from the $54,000 donation against current outstanding arrearages (Reso. R-1110-91); and

WHEREAS, by separate agreement the County and Lessee agreed that the County may purchase fuel for its vessels and offroad maintenance equipment from the Lessee in an amount not to exceed $20,000 per year and which separate agreement expires February 4, 1996 (Reso. No. R-91-91); and

WHEREAS, Haulover Resort Marina, Inc. filed for protection under Section 1121(a) of Title 11, United States Code (the "Bankruptcy Code") on January 17, 1994; and

WHEREAS, Haulover Resort Marina, Inc. has offered a plan of reorganization pursuant to the Bankruptcy Code, which plan has been accepted by the Bankruptcy Court; and

WHEREAS, Westrec Equities, Inc. has assumed ownership of the assets of Haulover Marina, Inc. as part of the reorganization plan; and

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WHEREAS, the County and Westrec Equities, Inc. desire to reestablish this venture under reasonable operating terms and conditions as provided under the instructions of the Bankruptcy Court;

NOW, THEREFORE, for and in consideration of the covenants, rights and obligations contained in the Lease, as amended, and this assignment and amendment, the adequacy of which is hereby accepted and acknowledged by the parties, the County and Westrec agree as follows:

1. The Effective Date of this assignment and amendment shall mean the first day of the month following approval by the Board of County Commissioners of Dade County, Florida.

2. This assignment and amendment is being made pursuant to the Bankruptcy Court order in Chapter 11 proceeding, Case Number 94-10176-BKC-AJC, dated March 2, 1995, a copy of which is attached as Exhibit 1.

3. Westrec does hereby accept assignment of the Lease, as previously amended, with all terms and conditions except those expressly amended by this Assignment and Amendment of Lease.

4. The initial term of the Lease shall be restarted so that the initial term shall be for ten (10) years beginning on the Effective Date. There shall be two (2) five (5) year renewal options as described in the Lease.

5. Separate and apart from any other payments due under the Lease, Westrec agrees to pay all existing arrearages under the Lease, which as of March 31, 1995 is the amount of $171,733.80 , as follows:

   a. Westrec shall pay on or before the Effective Date, the amount of thirty-six thousand dollars ($36,000); and
   b. Westrec shall pay, on the first day of each month thereafter for one hundred twenty (120) months, the amount of one thousand dollars ($1000.00); and
   c. Westrec shall pay any and all remaining arrearages that may be due at the end of the one hundred-twentieth (120th) month; and
   d. Westrec agrees to pay late fees at the rate of one and one-half percent (1.5%) of the arrearages on the first day of each month and in accordance with the schedule attached as Exhibit 2.
   e. Notwithstanding the above, Westrec shall have the right to pay all outstanding arrearages in amounts greater than specified above or in full without penalty.

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Payment of the obligations described above shall be guaranteed by Westrec Financial, Inc., the parent company of Westrec Equities, Inc., through a Promissory Note to be executed in a separate document by the parent company for the full amount of arrearages.

6. Westrec agrees to make improvements to the facilities on the demised premises in accordance with procedures contained in the Lease and its Construction Rider and in the amount of not less than two hundred thousand dollars ($200,000) during the first twelve (12) months following the Effective Date and not less than one hundred thousand dollars ($100,000) during the second twelve (12) months following the Effective Date.

7. Westrec agrees to donate to Dade County and Dade County hereby agrees to accept from Westrec full, unencumbered, free and clear ownership of all existing improvements and all improvements to be made at the demised premises. Westrec shall be entitled to properly use all such improvements in accordance with the Lease.

8. Westrec agrees that the County may purchase fuel for its vessels and offroad maintenance equipment from Westrec at the demised premises at Westrec's delivered cost plus five cents ($0.05) per gallon, as shown on the immediately preceding recent bona fide fuel delivery receipt, and such purchases shall not be included in Gross Receipts nor subject to Percentage Fees as defined in the Lease.

9. No other terms or conditions are hereby modified and all unmodified terms and conditions are hereby accepted and ratified and remain in full force and effect.

IN WITNESS WHEREOF, the County and Westrec have caused their duly authorized representatives to execute this Assignment and Amendment of Lease as of the date first written above.

ATTEST: Harvey Ruvin, Clerk of the Board

METROPOLITAN DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Armando Vidal, P.E.
County Manager

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WESTREC EQUITIES, INC.

By: _____
Jeffrey K. Ellis, VICE-PRESIDENT

DATE: April 24, 1996

By: _____
Michael M. Sachs, PRESIDENT

(seal)

DATE: April 24, 1996

Agenda Item No. 5(e)(39)
11-21-89

RESOLUTION NO. R-1393-89

RESOLUTION APPROVING ASSIGNMENT OF LEASE FROM GOLD COAST RACKS, INC. TO HAULOVER RESORT MARINA, INC. AND AUTHORIZING COUNTY MANAGER TO EXECUTE AN ADDENDUM TO LEASE TO ALLOW LEASEHOLD MORTGAGING IN AMOUNT NOT TO EXCEED $500,000 AND TO EXERCISE TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, this Board approves:

(1) The Assignment of the Lease for development and operation of boat storage and ancillary facilities at Haulover Beach Park from Gold Coast Racks, Inc. to Haulover Resort Marina, Inc.; and

(2) An Addendum to the Lease to allow a one-time leasehold mortgaging in an amount not to exceed $500,000 in substantially the form attached and made a part hereof;

And authorizes the County Manager to excerise the termination conditions therein and, subject to approval of the County Attorney, to execute the addendum and such other documents as may be necessary related to leasehold mortgaging for and on behalf of the County; and directing the Clerk of the Board to file all relevant documents in the Official Records of the County.

The foregoing resolution was offered by Commissioner Sherman S. Winn who moved its adoption. The motion was seconded by Commissioner Charles Dusseau, and upon being put to a vote, the vote was as follows:

Barbara M. Carey	absent
Charles Dusseau	aye
Joseph M. Gersten	aye
Larry Hawkins	aye
Harvey Ruvin	aye
Barry D. Schreiber	absent
Jorge E. Valdes	absent
Sherman S. Winn	aye
Stephen P. Clark	aye

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The Mayor thereupon declared the resolution duly passed and adopted this 21st day of November, 1989.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

By: RAYMOND REED
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency. DBM

MEMORANDUM

Agenda Item No. 5(e)(39)

TO Honorable Mayor and Members
Board of County Commissioners

DATE November 21, 1989

SUBJECT Lease Assignment and Mortgaging for Boat Storage Facility at Haulover Beach Park

FROM Joaquin G. Avino, P.E., P.L.S.
County Manager

Recommendation

It is recommended that the Board approve an assignment of the Lease with Gold Coast Racks, Inc. to Haulover Resort Marina, Inc. and an addendum to the Lease to allow a one-time leasehold mortgage in an amount not to exceed $500,000.

Background

Following public bidding, the Board approved a Lease with Gold Coast Racks, Inc. for the development and operation of a boat storage facility at Haulover Beach Park (Reso. No. R-1051-88). One of the conditions of the Lease is the requirement that the Board approve any assignment and any pledge of rights in Lease.

Gold Coast Racks, Inc. wishes to increase funds available to expand construction, cover cost overruns and provide additional working capital. To accomplish this, Gold Coast Racks, Inc. desires to borrow an amount not to exceed $500,000. Current improvement costs exceed $600,000. At present, total costs will be more than $1,500,000. As part of this borrowing, the stockholders wish to restructure the company. To accomplish this a new company, Haulover Resort Marina, Inc. was formed. Therefore, it is requested that the Lease be assigned to the new company and that the new company be the borrower. The attached Disclosure Affidavits show the changes in ownership structure.

The addendum authorizing the one-time leasehold mortgaging follows standards set in earlier dealings with other Lessees. In case of default, a lender will have the right to take over the operation and find a replacement operator. If the replacement operator is acceptable to the County, a new lease may be executed by the County Manager. However, the rights of all parties are subordinate to the County's rights to the lease terms.

ASSIGNMENT OF LEASE

In consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, GOLD COAST RACKS, INC., A Florida corporation, does hereby assign, transfer, convey and set over unto HAULOVER RESORT MARINA, INC., a Florida corporation all of its rights title and interest in that certain Lease Agreement dated July 19, 1988 and amended November 7, 1989 by and between METROPOLITAN DADE COUNTY and GOLD COAST RACKS, INC. for a boat storage facility at Haulover Beach Park.

ATTEST:

Richard E. Gregory
Secretary

GOLD COAST RACKS INC.

Richard E. Gregory
President

ACCEPTANCE OF ASSIGNMENT

HAULOVER RESORT MARINA, INC. does hereby accept the foregoing Assignment and agrees to assume and abide by the duties, responsibilities, terms, and conditions of the above described Lease Agreement.

Dated this 7th Day of November 1989.

ATTEST:

Richard E. Gregory
Secretary

HAULOVER RESORT MARINA, INC

Richard E. Gregory
President

Seal

CONSENT TO ASSIGN

METROPOLITAN DADE COUNTY hereby consents to the foregoing assignment from GOLD COAST RACKS, INC. to HAULOVER RESORT MARINA, INC.

Dated this 7th day of November 1989.

ATTEST

County Clerk

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

METROPOLITAN DADE COUNTY

County Manager

METRO-DADE COUNTY DISCLOSURE AFFIDAVIT

I, RICHARD GREGORY, being first duly sworn, state:

1. The full legal name and business address* of the person or entity contracting or transacting business with Dade County are:

HAULOVER RESORT MARINA, INC.
15000 COLLINS AVE. MIAMI BEACH, FL. 33154

2. If the contract or business transaction is with a corporation, the full legal name and business address* shall be provided for each officer and director and each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract or business transaction is with a partnership, the full legal name and business address* shall be provided for each partner. If the contract or business transaction is with a trust, the full legal name and address* shall be provided for each trustee and each beneficiary. All such names and addresses are:

U.P. 60% JAMES GREGORY, WOODLAND RD., SWICKLEY, PA. 15143
Secr. 10% JAY LEADER, SUITE 211, PENNSCOORT, 350 S. MAIN ST, DOYLESTOWN, PA 18
Pres. 30% RICHARD GREGORY, 15000 COLLINS AVE. MIAMI BEACH, FL. 33154

3. The full legal names and business address* of any other individual (other than subcontractors, materialmen, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable, beneficial or otherwise) in the contract or business transaction with Dade County are:

DATE: 10/6, 1989

RICHARD GREGORY
NAME OF AFFIANT

Signature

SWORN to and subscribed before me this 6 day of OCTOBER, 1989.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires: Notary Public, State of Florida at Large
My Commission Expires August 2, 1992

*Post office box addresses not acceptable.

Use separate attached pages if necessary.

"Any person who willfully fails to disclose the information required by...this section, or who knowingly disclose false information in this regard, shall be punished by a fine of up to five hundred dollars ($500.00), or by imprisonment in the county jail for up to sixty (60) days, or both in the discretion of the court." Ordinance 88-121, effective 12/30/88

-21-89
R-1393-89

ADDENDUM TO LEASE

This Addendum to Lease, made and entered into this 21st day of November, 1989, by and between METROPOLITAN DADE COUNTY (the "County") and GOLD COAST RACKS, INC. (the "Lessee")

WITNESSETH

WHEREAS, the County and Lessee have entered into a Lease Agreement, dated July 19, 1988, for the development and operation of boat storage and ancillary facilities, and

WHEREAS, said Lease Agreement requires that the Board of County Commissioners of the County approve any assignemnt, mortgaging, pledging and encumbering of the Lease Agreement, and

WHEREAS, the Lessee, or Haulover Resort Marina, Inc. as new Lessee if approved as assignee of the entire Agreement, desires to enter into a leasehold mortgage to pay for additional construction, cost overruns and allow greater working capital, and

WHEREAS, the County desires that Lessee accomplish such additional construction, pay cost overruns and have greater working capital,

NOW, THEREFORE, for and in consideration of the mutual benefits of said Lease Agreement and this Addendum, the parties hereto agree as follows:

Leasehold Mortgaging: Lessee will be permitted to encumber its leasehold estate created by the Lease to a financial institution, insurance company, pension or retirement or welfare trust, or a fund supervised by a governmental authority (the "Lender"). Such encumbrance may be by mortgage, deed of trust or other security interest, including but not limited, an assignment, subordinate to Lessor's rights, including but not limited to rents, issues and profits from the leasehold estate (the "Leasehold Mortgage"). Lessee shall provide true copies of intended notes and Leasehold Mortgages to the County for review and approval by the County Attorney prior to closing of such instruments and shall include therewith the addresses to which all notices to Lender hereunder are to be forwarded. The Leasehold Mortgage permitted and defined in this Section shall be limited to securing of a one-time nonrenewable financing of Capital Improvements constructed by or for Lessee on the Demised Premises ("financing of improvements"), which financing may disencumber other Lessee funds provided that such funds are used for the purposes of the Lease. The amount of financing shall not exceed $500,000.

Lessee may not encumber the leasehold estate as security for any other indebtedness.

The Leasehold Mortgage and all rights acquired thereunder shall be subject to each and all of the provisions of the Lease and to all rights of Lessor. The following provisions shall apply to such Leasehold Mortgages:

(a) Lessor and Lessee agree that any Leasehold Mortgage shall require that Lender shall provide concurrently to Lessor all notices which are sent to Lessee.

(b) Lessor shall provide concurrently to Lender all notices which are sent to Lessee at Lender's last address as furnished to Lessor by Lessee or Lender.

(c) Lessor and Lessee will not mutually terminate the Lease, and Lessor will not acccept a surrender of the Lease from Lessee, without the prior written consent of Lender. If such consent is not received from Lender within sixty (60) days after notice of intent to terminate is received by Lender, then such consent shall be deemed granted. If Lender does not consent to such termination, then Lender shall commence to cure as provided in subparagraph (d) hereof. Nothing in this subparagraph (c) shall impair Lessor's right to terminate the Lease in accordance with the provisions of subparagraph (d) below in the event of a default and the failure or refusal of Lender to comply with the provisions of subparagraph (d).

(d) Lessor may not terminate Lease in the event of default without giving Lender written notice (the "Notice of Intent to Terminate") and allowing Lender, at its election, to cure defaults, which election by Lender must be made within sixty (60) days of the date of the Notice of Intent to Terminate. In the event Lender elects to cure, Lender shall be responsible for curing all monetary defaults upon expiration of such 60-day period and shall further be required to continue or to cause to be continued at all times (including during the 60-day period) operation and maintenance of the Demised Premises and improvements thereon (the "Project") in accordance with the terms of this Lease Agreement ("Lease"). If foreclosure is required to cure the default and Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Lessee from commencing or prosecuting foreclosure proceedings, the Lease will not be terminated by Lessor provided that Lender has commenced and is diligently pursuing foreclosure, all rental payments are current and the Demised Premises are continuously operated and maintained in accordance with the terms of the Lease, provided that, in the event of any bankruptcy or insolvency proceedings involving Lessee, Lender's obligation to enter into an Acceptable Operator's Agreement or to assign the Lease to an Acceptable Operator (as defined and required in the immediately succeeding sentence) shall be extended. Within three (3) months of the date of the Notice of Intent to Terminate, Lender shall enter into an Agreement (the "Acceptable Operator's Agreement") for operation of the Project with an operator reasonably acceptable to the County (the "Acceptable Operator") or shall assign the Lease to an Acceptable Operator, provided that, if Lender is unable (despite diligent efforts) on or before expiration of the aforementioned 3-month period to engage and enter into an Acceptable Operator's Agreement for the Project or it becomes unlawful to operate the Project in accordance with the terms, then Lender shall relinquish all rights in connection with the Project.

No default shall be deemed to exist so long as Lender is complying with the provisions of this subparagraph (d). If Lender fails to comply with any of the requirements of this subparagraph (d) during such 60-day period, the Lease will terminate upon expiration of any applicable cure periods provided to Lessee in the Lease and upon five (5) days written notice to

Lender, and Lender shall have no further opportunity to cure any default hereunder.

(e) Lender or assignee(s) shall have the right, but not the obligation, to cure defaults. Lender and assignee(s) shall have no personal liability with respect to the performance of Lessee's obligations under the Lease, it being understood that the sole recourse of Lessor shall be limited to Lender's or its assignee(s)' interest in the Demised Premises, and Lender may, at any time, notify Lessor in writing that it relinquishes all rights in the Project and shall thereafter have no liability with respect to the Lease.

(f) If any foreclosure by Lender is due solely to a default under the Leasehold Mortgage (and not to a default under the Lease), the 3-month period described in subparagraph (d) above shall be replaced by a 3-month period which shall be deemed to commence upon final judgment in such foreclosure proceedings, and Lender may transfer or assign Lessee's interest under the Lease subject to the consent of Lessor to such assignment or transfer, which consent by Lessor shall not be unreasonably withheld or delayed. No such foreclosure or sale shall constitute a breach of the Lease.

(g) In the event of default during construction of improvements, the incomplete improvements shall, at Lender's or Lessor's option as hereinafter provided, be completed or demolished using performance bond funds either (i) at the option of Lender in the event it is complying with the provisions of subparagraph (d) above, or (ii) in the event Lender does not exercise its rights within the 60-day period provided in subparagraph (d) above or relinquishes its rights thereunder, at the option of Lessor.

(h) Lessee shall be required to obtain and maintain (i) full value replacement insurance (which shall include coverage for demolition and razing of the Demised Premises) with an automatic escalator index, and (ii) business interruption insurance covering debt service, rental obligations for a 12-month period and the cost of maintenance of the Project. Lessor shall be an additional named insured and copayee. Subject to the provisions of paragraph 31 of the Lease, in the event of a casualty loss to the Project, insurance proceeds will be disbursed to Lessee or, if Lender is in possession, to Lender, for reconstruction. Such reconstruction shall commence as soon as practicable, but in any event within 60 days after insurance proceeds are available, provided that, if it is impracticable to commence reconstruction within such 60 day period, Lessee shall request in writing the consent of Lessor to a reasonable extension of such 60 day deadline, which consent shall not be unreasonably withheld. In the event casualty proceeds are insufficient to reconstruct the Project, Lessee shall be required to pay any shortfall, provided that, if Lessee is unable or shall fail to pay any such shortfall, then Lessor shall give written notice thereof to Lender. Lender shall have the right, but not the obligation, to fund such shortfall within sixty (60) days of the date of such notice. If such shortfall is not funded within such 60 day period, then Lessor may terminate the Lease. In the event of a termination, Lessee shall be required to return to Lessor the Demised Premises in a condition which is either "as is" as of the date of such casualty loss, reconstructed to the extent possible with casualty proceeds, or razed of all improvements at

the option of Lessor. The balance of the insurance proceeds shall, in the event of such termination or election to reconstruct, be disbursed to Lender to the extent of any outstanding amounts due Lender by Lessee under the Leasehold Mortgage documents.

(i) If the Lease is rejected in bankruptcy proceedings, Lender may request and, provided Lender is complying with the provisions of subparagraph (d) above, Lessor shall execute a new lease with Lender or an Acceptable Operator for the balance of the term (and any extension thereof) and on the same terms and conditions.

(j) In the event of a default by Lessee and/or the institution of foreclosure proceedings and Lender is complying with the provisions of subparagraph (d) above or the 60-day period thereunder has not yet expired, if Lessee nonetheless is able, prior to termination of the Lease and/or conclusion of the foreclosure proceedings, to cure all defaults and to make Lessor and Lender whole, then Lessee shall be entitled to repossession and to any excess profits earned by Lender during such default or foreclosure period.

(k) On the recording of the Leasehold Mortgage, Lessee shall, at its expense, cause to be recorded, in the office of the County Recorder of Dade County, a written request executed and acknowledged by Lessee for a copy of all notices of default and all notices of sale under the Leasehold Mortgage. Inclusion in the body of the recorded Leasehold Mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.

(l) Lessor acknowledges Lessee's right to propose future conforming amendment to the Lease if reasonably necessary to implement the intent of the foregoing amendments, provided that no such amendments will relate to the term of the Lease or seek to limit or decrease materially Lessor's rights.

(m) In the event Lender (or any permitted assignee) becomes Lessee under the Lease, Lender (or any permitted assignee) shall have the right to exercise all options and other rights provided to Lessee under the Lease (and/or provided to Lender with respect to any permitted assignee), including, without limitation, the renewal options set forth in the Lease.

No other terms and conditions of this Lease are hereby amended or modified except as provided herein. The Lease remains in full force and effect as is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have caused their appropriate officials to execute the Addendum as of the date first written above.

ATTEST: Richard P. Brinker
Clerk of the Board

By: _____
Deputy Clerk

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Joaquin G. Avino, P.E., P.L.S.
County Manager

By: _____
Richard Gregory
Secretary

GOLD COAST RACKS, INC.

By: _____
Richard Gregory
President

Agen Item No. 5(e)(42)
7-19-

RESOLUTION NO. R-1051-88

RESOLUTION AUTHORIZING EXECUTION OF LEASE AND AGREEMENT WITH GOLD COAST RACKS, INC. FOR THE INSTALLATION AND OPERATION OF A BOAT DRY STORAGE FACILITY AT HAULOVER BEACH PARK, SUBJECT TO APPROPRIATE GOVERNMENTAL APPROVALS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approves the Lease and Agreement between Dade County and Gold Coast Racks, Inc., by which Dade County will authorize the installation and operation of a boat dry storage facility at Haulover Beach Park, subject to obtaining appropriate govermental approvals, in substantially the form attached hereto and made a part hereof, and authorizes the County Manager to execute same for and on behalf of Dade County.

The foregoing resolution was offered by Commissioner Clara Oesterle, who moved its adoption. The motion was seconded by Commissioner James F. Redford, Jr. and upon being put to a vote, the vote was as follows:

Barbara M. Carey	absent
Clara Oesterle	aye
Beverly B. Phillips	aye
James F. Redford, Jr.	aye
Harvey Ruvin	absent
Barry D. Schreiber	aye
Jorge E. Valdes	aye
Sherman S. Winn	aye
Stephen P. Clark	aye

The Mayor thereupon declared the resolution duly passed and adopted this 19th day of July, 1988.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

Approved by County Attorney as to form and legal sufficiency. DBM

By: RAYMOND [illegible]
Deputy Clerk

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MEMORANDUM

107.07-17 A

Agenda Item No. 5(e)(42)

TO Honorable Mayor and Members
Board of County Commissioners

DATE July 19, 1988

SUBJECT Approval of Lease Agreement for Boat Dry Storage Facility at Haulover Park

FROM Joaquin G. Avino, P.E., P.L.S.
County Manager

RECOMMENDATION:

It is recommended that the Board approve the responsive proposal of Gold Coast Racks, Inc. to the Boat Dry Storage Facility at Haulover Beach Park RFP and authorize the execution of a Lease Agreement with Gold Coast Racks, Inc. for the financing, development and operation of a boat dry storage facility at Haulover Beach Park.

BACKGROUND:

The Board of County Commissioners approved the RFP process on September 1, 1987. Due to the public interest in boating-related activities in this area and private sector business interest in meeting the estimated public demand for a "rack" type boat dry storage facility in the Park, coupled with the Department's budgetary constraints in providing this service and facility, a Request For Proposals was duly advertised and proposals received. The proposal of Gold Coast Racks, Inc. was recommended by the Culture and Recreation Committee on January 28, 1988 as being in the best interest of the County.

The facility would be part of the Park's boat ramp area. A minimum of $700,000 would be invested by the proposer. The County would receive an annual minimum rent of $48,000 plus varied percentages of gross receipts on services and goods offered for rental or sale.

Design and construction approvals also are being sought via Dade County 33-303 hearing, County DERM Class I Coastal Construction Permit, Shoreline Development Review and U.S. Army/State of Florida D.E.R.

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, RICHARD P. BRINKER, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R-1051-88, adopted by the said Board of County Commissioners at its meeting held on July 19, 19 88

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 21st day of July, A. D. 19 88.

RICHARD P. BRINKER, Ex-Officio Clerk
Board of County Commissioners
Dade County, Florida

By _____
Deputy Clerk

SEAL

Board of County Commissioners
Dade County, Florida

102.01-3 REV. 11/72

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R-1051-88

LEASE AND AGREEMENT

THIS LEASE AGREEMENT, made and entered in this 19th day of July, 1988, by and between METROPOLITAN DADE COUNTY, FLORIDA, (the "County",) and GOLD COAST RACKS, INC., (the "LESSEE",)

WITNESSETH:

WHEREAS, the County owns and operates facilities at Haulover Beach Park ("Park") for the recreation and entertainment of park patrons, and

WHEREAS, the County has duly advertised for proposals and received proposals for the lease of a portion of the said marina area, and

WHEREAS, the proposal of Lessee (the "Proposal") was determined to be in the best interest of the County,

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1. Purpose: The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County, a Lease of designated shore/bulkhead area and adjcent land spaces as described in paragraph 7 for the operation of a boat dry storage facility. Additional initially approved activities include certain boat and boat equipment repair, and the sale or rental of novelties and merchandise directly related to the operation of the facility, as shown in Exhibit A, attached and made a part hereof, so long as the sales and rentals do not conflict with the previously or currently existing exclusive rights of others, as determined by County Manager or his designee (the "Department").

2. Term: The County hereby leases to the Lessee for a term of ten (10) years, beginning on the date determined by Department when Lessee's construction is substantially complete, and ending ten (10) years from the date thereof, the premises described in paragraph 7 hereof for the operation of a boat dry storage facility and such other activities that have been or may be approved pursuant to paragraph 1 above, within Haulover Beach Park Marina, which leased premises and improvements located thereon are hereinafter called the "Facilities".

3. Option to Renew: Provided that there has been no material default of the Lease by Lessee, Lessee may, by written notice to and approval by the Department at least six months before the end of the current term, renew this Lease for one additional period of five (5) years from the end of the original term, upon the same terms and conditions as set forth herein, provided, however, that the minimum monthly rental payable shall increase or decrease based upon the Consumer Price Index. In determining the increase or decrease in the minimum monthly rental, the "All Items" figure in the Consumer Price Index (1982-84 = 100), U.S. city average issued by the Bureau of Labor Statistics of the United States Department of Labor, as of the date of the last adjustment date to the minimum monthly rent, shall be compared to said figure as of the first day of the proposed renewal period. The minimum monthly rental shall be adjusted to an amount equal to the minimum monthly rental amount at the end of the initial ten year term of this Lease multiplied by a fraction whose numerator is said Consumer Price Index figure on the first day of the proposed renwal period and whose denominator is said figure on the date of the last adjustment date to the minimum monthly rent.

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If the Consumer Price Index referred to herein becomes unavailable, the index to be used shall be the index of the General Price Level, issued by the Federal Reserve Bank of Atlanta. If the last mentioned index also becomes unavailable, the index to be used shall be the index of the General Price Level issued by the Federal Reserve Bank of New York. The base index shall be the index as of the last adjustment date to the minimum monthly rent, and in the event no figures are issued for said date, then the last figures of said index issued immediately before said date shall be considered the base index. In the event no figures are issued for the first day of the proposed renewal period, then the last figures of said index issued immediately before said date shall be used as the index on such date. Such renewal period shall run consecutively to the original term of the Lease so as to make this Lease continuous in its operation from the beginning to its termination, a period of fifteen (15) years. Renewals beyond the first shall be at County option on such terms and conditions as the parties hereto may agree. In the event that the parties do not agree on terms for renewal periods beyond the first before the expiration of this Lease, Lessee shall have no further rights under this Lease.

4. Exclusivity: The rights granted under this Agreement are exclusive only to the site to be leased hereby and as to types of services items offered. The Lessee acknowledges that other parties are and shall be entitled to provide competing services within the Park. Nothing contained in this Agreement shall preclude the County from charging parking or other fees from patrons.

5. Additional Services and Space: The Department, at its sole discretion, may allow the Lessee to provide additional service and/or use additional space adjacent to the leased premises or within the park, upon such terms as the parties may agree. Such additional services must follow the theme of the approved purpose of this Agreement.

Such services and/or facilities may also be provided by Lessee under a sub-contract. Terms and conditions, including payment of fees to the County, of any sub-contract are subject to prior approval by the Department.

If the Department and Lessee cannot agree to terms for such additional services and/or space within a time period determined by the Department, the Department may then provide such additional services and/or facilities itself or seek a different Lessee for such additional services and space through normal public bidding procedures. Failure to agree to terms shall not preclude Lessee from participating in the public bidding.

6. A. New Construction: The Department shall approve all construction, all installation and all use of the Facilities. Lessee shall bear the cost associated with such construction, installation and use. Lessee shall spend a minimum of $700,000.00 for immediate improvements, as represented within the Proposal. All improvements shall become the property of the County at termination of this Agreement. All construction shall be accomplished in accordance with the Construction Rider, made a part hereof as Attachment B, by reference.

B. Until achievement of eighty percent (80%) occupancy of the boat dry storage facility, Lessee shall spend a minimum of $60,000.00 annually for marketing, advertising and promotion in accordance with their approved Marketing Plan as set forth in the Proposal. The Marketing Plan and Marketing Budget will be submitted at the beginning of each contract year for Department approval.

7. Property Description: Haulover Beach Park ("Park"), 10800 Collins Avenue, Miami Beach, Florida 33154, shore area and adjacent land space as shown on Attachment A.

8. Minimum Rental Guarantee: Lessee shall pay a minimum monthly rental of eleven percent (11%) of Lessee's Gross Receipts (as hereinafter defined) to the County from the date the premises, described in paragraph 7 hereof, are certified by he Department to be available for the Lessee's intended beneficial use and occupancy, until the first day of the fourth month thereafter (provided, however, that if said certification date is subsequent to the fifteenth of the month, such initial rental period shall continue until the first day of the fifth month thereafter). Thereafter, Lessee shall pay a minimum monthly rental of Four Thousand and 00/100 Dollars ($4,000.00) to the County until such time as the rental rates for the premises are adjusted as provided herein. If the last month of the term of this Lease (including renewals) is less than a full month, or if the minimum monthly rental is adjusted, as provided below, during the month, Lessee shall pay a pro rata share of the minimum rental for said month in effect at said time. Said Minimum Rent shall be due on the tenth (10th) day of each month for each preceeding month without billing. In the event that Lessee leased additional space, the rental fees may differ from the minimum rental guarantee rate. These rates shall be interim rates until reviewed as established below.

9. Rental Rate Review: The guaranteed rental rate(s) stated herein shall be subject to fair and non-discriminatory review and adjustment at the end of the first (1st) year from the date of commencement of this Agreement by Lessor, and each one (1) year period thereafter, provided, however, that any increase in the monthly minimum rental rate shall not exceed six percent (6%) of the immediately previous monthly minimum rental rate. Rates for additional properties shall be reviewed at the same time as the rate review for the minimum lease regardless of time adding the additional space. When such rental rates are established and approved by appropriate action of the Board of County Commissioners, this Lease Agreement shall be considered amended, and written notification shall be provided by the Department to the Lessee of the establishment and effective of the said rental rate(s) applicable to the leased premises.

10. Percentage Fees: The Lessee shall pay to the County, to the extent greater than the minimum rent, without billing:

10 % of Gross Receipts from rental of boat racks and storage space, and from vending machines

7 % of Gross Receipts from boat rental

5 % of Gross Receipts from marine towing and salvage, used boat and engine sales, insurance sales

3 % of Gross Receipts from sale of marine supplies, shipstore service and repair.

Such payment shall be received by the appropriate County office the tenth (10th) day of the month following the month during which the gross receipts as defined in Paragraph 11 herein, were earned.

11. Gross Receipts. The term gross receipts as used in this Agreement means all monies paid to or considerations of determinable value received by the Lessee for sales made, transactions had or for services rendered, from all sources, in the operations of this Agreement, regardless of when or where the order therefore is received, or the goods delivered, or services rendered; provided, however, that any taxes imposed by law which are separately stated to and paid by customer and directly payable by the Lessee to a taxing authority, sales refunds and specifically authorized by the Department discounts may be excluded therefrom.

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12. Sales Tax: The Lessee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 6%) on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County which in turn will remit same, less authorized handling deductions to the State. Said tax is applicable to guarantee and percentage payments, unless otherwise determined by the State of Florida.

13. Payment of Fees: The Lessee shall pay all fees and charges required by this Agreement to the following:

Park and Recreation Department
Contract Management Section
50 S.W. 32nd Road
Miami, FL 33129

(Checks shall be made payable to the "Dade County Board of County Commissioners".)

In the event Lessee fails to pay any of the rentals, fees or charges as required to be paid under the provisions of this Lease Agreement within ten (10) days after same shall become due, interest at the rate approved by the County (currently 1½% per month) shall accrue against the delinquent payment(s) until same are paid. Interest shall be charged from the date payment is due. Implementation of this provision shall not preclude the County from terminating this Lease Agreement for default in the payment of rentals, fees or charges, or from enforcing any other provisions contained herein.

14. Reports and Records:

A. The Lessee shall maintain during the term of this Lease Agreement all books of account, reports and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement and all monies collected hereunder, not limited to gross receipts. The form of all such records, cash registers, tapes, books, ledgers, journals, sales slips and invoices, installed or used for recording the operations of the Lessee under this Agreement shall be subject to the approval of the Department prior to commencement of operations. Subsequent recommendations for changes, additions or deletions shall be contingent upon written approval of the Department.

B. On or before the tenth (10th) day following the end of each calendar month throughout the term of this Agreement, the Lessee shall furnish to the Department a report of gross receipts during the preceding calendar month, on forms approved by the Department. This report shall be signed by the Lessee certifying to the accuracy of such gross receipts. Any percentage fees or charges due shall be payable with the submission of the report provided for in this Article.

C. Lessee shall submit to the Department at its own expense, within sixty (60) days following each twelve (12) month period of operation under this Agreement, a report prepared and attested to by an independent Certified Public Accountant, as to the correct gross receipts per month arising from the Lessee's operations under this Agreement. The report due under this Paragraph shall, for the first reporting period, cover the period ending twelve months from the date of the execution of this Lease, plus the balance of the number of days necessary to have the period end on the last day of a month in the event this Lease is not executed on the first day of a month. Reporting periods may be adjusted with prior written approval of the Department. Accompanying the above report

shall be a second report showing all improvement costs as required in Paragraphs 6A and 25A and a report attesting to expenditure in accordance with the approved Marketing Plan as required in Paragraph 6B.

D. The Lessee shall allow the Department or the auditors of the County to inspect all or any part of the compilation procedures for the aforesaid monthly reports. Said inspection shall be reasonable and is at the sole discretion of the Department. Records shall be available Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m. at a location within Dade County.

E. All records of the Lessee necessary to verify any report set forth herein shall be available to the Department and the County's auditors at a reasonable location in Dade County, Florida, for a period of five (5) years after the end of any lease year.

15. Facilities:

A. The Lessee hereby agrees to submit for approval by the Department detailed plans and specifications for any anticipated leasehold improvement and shall construct the improvements in accordance with the approved plan as outlined in the Construction Rider.

B. The design, structure and all pertinent features of the Facilities are to be constructed by or for the Lessee shall be subject to change upon the mutual consent of the Department and Lessee.

C. All equipment and personal property furnished by Lessee shall be of good quality and suitable for its purpose. To insure such quality and suitability, the County Manager or his designee shall have the right to require substitute equipment or personal property or additional equipment or personal property when such action is deemed necessary or desirable. Equipment acquired by the Lessee by purchase from the County that is unsuitable for Lessee's operation may be replaced with other equipment or personal property of the Lessee's choice, subject to the above conditions.

D. The County shall be given the right of purchase of any personal property within the leased premises according to procedures listed in Paragraph 45.

E. It shall be the responsibility of the Lessee to coordinate activities with the County during any construction and normal operations.

16. Facility Manager: The Lessee shall hire and assign a full-time qualified, experienced facility manager for its operations in the Facilities. Said facility manager will have no other duties or responsibilities and will be physically available during reasonable operating hours. The qualifications of said facility manager shall be submitted to the Department upon request. During the hours when the manager is not on duty or available, there shall be a designated assistant manager. The manager and assistant manager shall be authorized representatives of the Lessee and entitled to act in all matters relating to the day-to-day operation of the facility hereunder. The Department shall be advised in writing of the names, addresses, social security numbers, and birth dates of the manager and assistant manager.

17. Departmental Approval: The Lessee agrees that it will obtain prior written approval from the Department in all of the following matters, which approval shall not be unreasonably withheld.

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A. Use of any type of vending machines, inside or outside of the building within the leased premises.

B. Changes from originally approved specifications, business activities, signage, and graphics.

C. Equipment Lessee plans to install requiring any building modifications.

D. Lessee's marketing plan, in an amount not less than $60,000.00 per year, except as otherwise provided in paragraph 6.B. hereof.

E. Any use of the County's, Department's, Park's or Facility's name.

F. Tree and similar vegetation replanting or removal.

Further, it is understood by the Lessee that should any of the above items be disapproved, Lessee may offer alternative solutions. The Department shall be allowed sixty (60) days to reach a decision in any of the above matters and failure to do so within such period shall constitute approval.

18. Department Approval of Change: The Department reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in Paragraph 17 it deems in need of change, despite previous approval of same.

19. Public Contact of Lessee's Employees: Lessee's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the Department to demand his or her removal from duties in the Concession. All employees, with the exception of the facility manager and assistant manager, shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Lessee's employees.

20. Minimum Hours of Operation: The Facilities will be required to operate seven days a week during those hours of operation reasonably approved by the Department. Sufficient Lessee attendants will be available to provide outstanding service. Prior to beginning operations, the Lessee shall submit a schedule of intended hours of operation to the Department for approval. The Department may require a change in hours of operation, if in the reasonable discretion of the Department, such a change is desirable in providing the best service to the public.

21. Quality of Lessee's Services:

A. The Lessee shall conduct its operations in an orderly manner and so as not to annoy, disturb or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

B. The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives and customers and patrons, and upon reasonable objection of the Department concerning the conduct, demeanor or appearance of any such person, Lessee shall immediately take all necessary steps to correct the cause of such objection.

C. Lessee shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain and repair, and upon the

expiration of this Agreement, or its termination in any manner, shall deliver said premises to the County in not worse condition than the same was at the commencement of this Agreement, loss by fire or other casualty and ordinary wear and tear only exceptions.

D. Lessee shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefor.

E. The Lessee shall not conduct any business or activity not specifically authorized by this Agreement, unless approved by the Department. It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of the public area or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Lessee agrees that a reasonable determination by the Department will be accepted as final in evaluating its activities which infringe on the rights of others and that Lessee will fully comply with any decisions on this matter.

22. This paragraph left intentionally blank.

23. Facilities and Services Provided by County: The County shall provide the following:

A. Electrical as existing.

B. Water facilities as existing.

C. Sewage collection facilities as existing.

D. Public pay telephone(s), under separate contract.

E. Janitorial service for the public areas of the Park.

24. Facilities, Equipment and Services Provided by Lessee: The Lessee, at its sole cost, shall provide and/or maintain leased premises.

A. Janitorial service within fifty feet of operations areas of the facility and solid waste removal from the facility.

B. Devices or registers for recording original sales as approved in advance by the Department (see Paragraph 14A).

C. All construction and maintenance.

D. Fire sprinkler system, as required by law.

E. Complete air handling system, as required by law.

F. All internal finishing such as ceilings, walls, decorations, furnishings and floor coverings, and any show cases, racks, other display and sales facilities, including concession identification, signing, subject to prior approval of the Department, which shall not be unreasonably withheld.

G. Installation and connection of utilities to operating equipment and utility meters. Lessee shall be responsible for utilities maintenance and costs.

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H. All operating equipment on the leased premises.

I. All interior and exterior maintenance and repair of facility.

J. All plumbing fixtures on the leased premises.

K. Pest control within and around operational areas of the facility.

L. Garbage and trash collection from the facility.

M. Public restrooms per approved plans and specifications.

25. Equipment Installed by Lessee:

A. All equipment, furnishings, signage and advertising installed by the Lessee shall be in keeping with the appropriate standards of decor at the Facilities and must be approved by the Department prior to installation, which approval shall not be unreasonably withheld. The Lessee shall not install, remove or replace the equipment or furnishings without notification to, and prior to approval by, the Department, which approval shall not be unreasonably withheld. Following the installation of any additional equipment, furnishing and improvements which the Department may approve from time to time, Lessee shall provide to the Department a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed.

No coin or currency-operated vending machines shall be installed or located within the premises unless it is deemed to be necessary for public service by the Department, in which event the Lessee may be requested to install specific types of vending machines. Gross revenues received by Lessee from any vending sales shall be included in Lessee's monthly gross receipts as provided in paragraph 10 hereof.

B. Lessee agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

C. Lessee shall not alter or modify any portion of the Facility, the leased premises or the improvements constructed therein without first obtaining written approval from the Department.

D. Lessee shall not sell, convey, mortgage, pledge or otherwise dispose of any of the equipment or furnishings installed on the leased premises without prior written consent of the Department, which shall not be unreasonably withheld. Lessee shall maintain a list of all personal property subject to liens, leaseing or other security arrangement and shall provide such list upon request by the Department. Third party security agreements affecting said equipment or furnishings are prohibited unless prior written consent is given by the Department, which shall not be unreasonably withheld.

26. Maintenance Responsibilities of The provision of janitorial services and all interior maintenance and repair within and around the leased premises are the sole and exclusive responsibility of the Lessee, including keeping and maintaining the leased premises in a first-class condition throughout the Agreement and any extension thereunder.

27. Damages: Lessee shall repair all damage to the leased or non-leased portions of the Facility caused by the Lessee, its employees, agents, customers, or independent contractors.

28. Utilities Within Leased Premises: Lessee shall maintain all utilities within the leased Facility including drains, sewer pipes, air conditioning, plumbing and electrical lines, services, outlets, and where required by the County, meters to monitor utility usage.

Lessee, at its own expense, will be responsible for connection of existing water, sewer, electric and any other utility to the site of new construction. Separate metering for electric will be required, and expense to be paid by Lessee. Cost of utilities service to be paid by Lessee.

29. Quiet Enjoyment of Leased Property: The County represents that it has free simple title to the leased premises and that it has the full right, power and authority to enter into this Lease. The County covenants and agrees that so long as no default exists in the performance of Lessee's covenants and agreements contained herein, Lessee shall peaceably and quietly hold and enjoy the leased premises and all parts thereof for that portion of the lease term, free from eviction or disturbance by the County or any person claiming under, by or through the County.

30. Liability for Damage or Injury: The County shall not be liable for damage or injury which may be sustained by any party or persons on the leased premises other than the damage or injury solely caused by the negligence or intentional actions of the County, its agents and employees.

31. Damage or Destruction of Premises: If either the leased premises or the leased buildings are partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the rent payable hereunder for the period of Lessee's business interruption, if any, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Lessee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Lessee's business interruption a pro-rata adjustment shall be made as to the minimum rental guarantee and utility fees.

In the event the said premises are completely destroyed or so damaged that they will remain unusable for more than thirty (30) days, the Lessee and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Lease and Concession Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the premises in a Lease and Concession Agreement, the Lessee may reconstruct the premises at its own cost.

32. Ingress and Egress: Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Facility, Lessee, his agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials, shall have right of ingress and egress to and from the leased premises.

33. Assignment, Subletting and Successors in Interest: Lessee shall not assign, sublet, mortgage, pledge nor otherwise encumber any portion of this Agreement nor any portion thereof, nor any property associated with this Agreement without written approval of the

Board of County Commissioners, which shall not be unreasonably withheld. Unapproved assignment, subletting, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement.

It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees, sublessees and other successors as may be approved.

Lessee shall be liable for acts and omissions by any subcontractor affecting this Agreement. The County reserves the right to directly terminate any subcontractor for any cause for which Lessee may be terminated.

34. Ownership of Lessee: The ownership of the Lessee is very important to the County. Therefore, the County reserves the right to terminate this Agreement any time more than 10% of the ownership of the Lessee has not been specifically approved by the Department. The Department shall reject any proposed new owner for any reason it believes is in the best interests of the public. Lessee agrees to provide on 24 hour notice to the Department an accurate list of all owners of the Lessee, showing the percentage of ownership of each owner. Lessees whose stock is listed on a major stock exchange may be wholly or partially exempted from the requirements of this paragraph at the discretion of the Department. The County acknowledges that it has specifically approved the current ownership of the Lessee, as further described in Attachment "D" hereto.

35. Performance Bond

A. Construction - The Lessee shall obtain and deliver to the Department, not less than ten (10) days prior to the anticipated commencement of any construction as provided in Paragraph 6 (A), hereof, a Completion and Payment Bond (Performance Bond) with a surety meeting the qualifications set forth in Paragraph 36, below, in favor of the County, said bond to be acceptable to the Risk Management Division of Dade County. The Bond shall be for the full amount of work and shall remain in effect until the completion of and payment for the improvements, free and clear of all claims of mechanics, laborers and material men, and any others participating in the construction activity.

The Lessee may, in lieu of a Performance Bond for its construction, substitute therefrom an escrow agreement with a financial institution or some other acceptable party. Said escrow agreement shall be with parties and in form acceptable to the Department and shall be submitted for approval twenty (20) days prior to the commencement of construction.

B. Operations - The Lessee shall furnish a Performance Bond to the County each year in the form attached hereto as Attachment C, with a surety meeting the qualifications set forth in Paragraph 36, below, in an amount equal to one (1) year of the Minimum Rental Guarantee contained in Paragraph 8. This Performance Bond will be conditioned solely upon the full and faithful performance of all covenants of this Agreement.

The Lessee may, in lieu of the Performance Bond, but subject to the conditions set forth in this subparagraph 35.B., deposit with the County a cash deposit or irrevocable letter of credit in the amount equal to one (1) year of the minimal Rental Guarantee contained in paragraph 8.

36. Indemnification and Insurance: The Lessee shall indemnify and save the County harmless from any and all claims, liability, lossses and causes of action which may arise out of the actions or negligence; in whole or in part of the Lessee, its officials, agents or

employees, in the fulfillment of this Agreement. The Lessee shall pay all claims and losses of any nature whatever in connection therewith, and shall defend all suits, in the name of the County when applicable, and shall pay all costs and judgments which may issue thereon.

The Lessee shall maintain the following insurance during the term of this Agreement:

1. Comprehensive General Liability Insurance in an amount not less than $1,000,000 combined single limit for bodily injury and property damage. Policy shall be endorsed to show Metropolitan Dade County as an additional insured.

2. Automobile Liability Insurance covering all owned, non-owned and hired vehicles in connection with the Agreement in an amount not less than $300,000 combined single limit for bodily injury and property damage.

3. Worker's Compensation Insurance - as required by Chapter 440, Florida Statutes.

4. Contractual Liability Insurance - Covering all liability arising out of the terms of this Agreement.

5. Fire and Extended Coverage Insurance covering all property both real and personal, naming the County as an additional payee.

6. The Lessee shall provide or cause its contractor to provide Builder's Risk Insurance during the construction required by Paragraph 6 of this Agreement, and shall proide any other insurance or security that may be reasonably required.

The insurance required shall include those classifications as listed in standard liability insurance manuals that most nearly reflect the operations of the Lessee.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

> The Company must be rated no less than "B" as to management, and no less than "Class "V" as to strength, as of 1986 or later, by the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve the Lessee of any liability and obligation under this section or under any other section of this Agreement.

The Lessee shall furnish Certificates of Insurance to the Department at least fifteen (15) days after to the date of approval of this Agreement, which Certificates shall clearly indicate that the Lessee has obtained insurance in the type, amount and classifications as

required for strict compliance of the contract. Insurance shall not be cancelled without thirty (30) days prior written notice to the Department.

The Department reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to the Lessee. The Lessee shall provide any other insurance or security reasonably required by the Department.

37. Cancellation by County: The occurrence of any of the following shall cause this Agreement to be terminated by the County upon the terms and condtions set forth below:

A. Termination after ten (10) days from receipt by Lessee of written notice by certified or registered mail to the address of Lessee set forth in paragraph 47 hereof, and failure of the Lessee to remedy same within the ten (10) day period following receipt of the written notice:

1. Institution of proceedings in voluntary bankruptcy by the Lessee.

2. Institution of proceedings in involuntary bankruptcy against the Lessee if such proceedings continue for a period of ninety (90) days.

3. Assignment by Lessee for the benefit of creditors.

4. Abandonment or discontinuation of operations hereunder.

5. The discovery of any misstatement in the Lessee's proposal leading to award of this Agreement, which in the determination of the County significantly affects the Lessee's qualifications to perform under the Lease and Concession Agreement.

6. Unapproved change of ownership interest in Lessee and/or failure to submit the ownership list within 24 hours upon the request of the Department.

7. Failure to cease any activity which may cause limitation of County's use of the Park.

8. The conducting of any business or the merchandising of any product or service not specifically authorized herein, and the failure to remedy same within the soonest practicable period from receipt of the written notice.

B. Termination after fourteen days from receipt by Lessee of written notice by certified or registered mail to the address of Lessee set forth in paragraph 47 hereof:

1. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Lessee makes the required payment(s) during the fourteen (14) calendar day period following receipt of the written notice.

2. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the fourteen day period from receipt of written notice.

C. Termination after thirty (30) days from receipt by Lessee of written notice by certified or registered mail to the address of the Lessee set forth in paragraph 47 hereof:

1. Non-performance of any covenant of this Agreement and failure of the Lessee to remedy such breach within the thirty (30) day period from receipt of the written notice.

2. A final judicial determination that litigation instituted by the Lessee against the County was groundless.

38. Termination by Lessee: Lessee shall have the right upon thirty (30) calendar days from receipt of written notice to the County to terminate this Agreement at any time after the occurrence of one or more of the following events:

A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the facilities for the purposes set forth herein, and the remaining in force of said injunction for period of more than thirty (30) calendar days.

B. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested from the Lessee, of the existence of such breach.

C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the facilities, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations hereunder for a period of ninety (90) calendar days or more.

39. Non-Discrimination:

A. Lessee does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:

1. No person on the ground of race, color, religion, national origin, sex, age or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Facilities, except for bonafide causes allowed by law.

2. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, age or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except for bonafide causes allowed by law.

3. That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the Department of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. That, in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the concession granted hereunder and re-enter and repossess said Facilities thereon and hold the same as if said concession had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

C. Lessee shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to hiring, tenure, terms, conditions or privileges to employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin or ancestry.

40. Rules and Regulations: The Lessee will observe, obey and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations under this Agreement. Lessee specifically acknowledges that it will be bound by Chapter 26 of the Dade County Code ("Park Ordinance") and shall not undertake any activity which shall cause challenge to the County's ownership or right to undertake otherwise authorized activities at the Park and will immediately cease upon notice from the County.

41. Payment of Obligations:

A. Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interest in the leased premises, its improvements and/or its operations under the Agreement; provided, however, that Lessee shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes and/or other costs.

B. The Lessee shall procure, at the sole cost of the Lessee, all permits, licenses and approvals required of Lessee for this operation and performance under this Agreement.

42. Emergency Evacuation and Hurricane Plan: The Lessee shall provide to the Department emergency evacuation and hurricane plans. These plans shall be detailed procedures of actions to be taken by Lessee and its employees or agencts if an evacuation need or Hurricane alert warning is present, including boat removal. Hurricane plans are to be initially submitted to the Department and annually updated or amended by Lessee by the second Tuesday of May of each year of this Agreement. Evacuation plans are to be initially submitted to the Department within fifteen (15) days following commencement of operations at the Facilities by Lessee, and an updated or amended plan is to be submitted within one year of each year of the Agreement following the initial submission date.

43. Inspection by County: The Department shall have the authority to make periodic, reasonable inspections of all of the leased premises, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Lessee shall be required to make any improvements in cleaning or maintenance methods reasonably required by the Department. Such periodic inspections may also be made at the Department's discretion to determine whether the Lessee is operating in compliance with the terms and provisions of this Agreement.

44. Facility Repairs, Alterations and Additions by the County: The County shall have the absolute right to make any reasonable repairs, alterations and additions to any structures and facilities, including the Facilities leased under this Agreement, free from any and all liability to the Lessee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions, except for such damage caused by the sole negligence or intentional misconduct of the County and where not otherwise indemnified by the Lessee. In making such repairs, alterations and additions, the County shall take such reasonble measures as are necessary to minimize

interference with Lessee's operations of the Facilities. If the Lessee's business is interrupted, a pro rata adjustment of the minimum rent payable hereunder, for the period of such interruption, shall be made.

45. Termination of Contract: The Lessee, within thirty (30) calendar days following the termination of this Agreement, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the Department for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Lessee for the safekeeping of Lessee's personal property.

The County shall have the senior security interest in Lessee's personal property. Lessee shall not remove any equipment, supplies in bulk, or fixtures within the leased premises at any time without pre-approval in writing from the Department. Lessee shall be liable to the County for the fair market value of any equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Lessee shall also be liable for any expenses incurred by the County in prosecuting any action against Lessee following unapproved item removal described above. Lessee shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Lessee.

It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by Lessee, except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Lessee.

Upon the termination of this Agreement and the removal of all personal property by Lessee, the Lessee shall deliver said premises to the County in the condition set forth in paragraph 21.C. hereof.

The Department shall have the right upon termination of this Agreement to retain any portion of the Lessee's personal property in the Facilities and pay to the Lessee the undepreciated value thereof. For purposes of this section, equipment and furnishings shall be depreciated on a straight line basis at twenty pecent (20%) a year.

46. Approvals: Except as provided otherwise, whenever prior approvals are required hereinabove or by the Construction Rider by either party, such approvals shall not be unreasonably withheld.

47. Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of Agreement, either at the time of the breach or failure occurs or at any time throughout the term of this Agreement.

47. Notices: Any notices submitted or required by this Agreement shall be sent by registered or certified mail and addressed to the parties as follows:

To the County:
Director
Park and Recreation Department
50 S.W. 32nd Road
Miami, Florida 33129

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To the Lessee: Gold Coast Racks, Inc.
8860 S.W. 87th Street
Miami, Florida 33173
Attention: Richard Gregory

or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party.

If attempted delivery of any such notice by the method abovestated is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, that notice will have the effect of being constructively received by the recipient.

48. Interpretations: This Agreement and the exhibits and attachments hereto, and other documents and agreements referred to herein, constitutes the entire, fully integrated Agreement between the parties with respect to the subject matter hereof and supercedes all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document, properly authorized, executed and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Board of County Commissioners. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by laws of the State of Florida.

49. Security: The Department makes no warranties as to any obligation to provide security for the Facilities, outside of standard security measures supplied for the Park in general. Lessee may provide its own specialized security for the Facilities, subject to the Department's written approval. Absence of said Lessee security measures shall not increase the County's or the Department's security obligation.

50. Attorney's Fees: In the event of any litigation arising from or pertaining to this Agreement or any of the transactions contemplated hereby, the prevailing party shall be entitled to payment of its attorneys' fees incurred in such litigation.

51. Condemnation: If all of the leased premises, or such portion thereof as will make the leased premises unsuitable for the purposes set forth herein, is condemned by judicial taking or otherwise for any public or quasi-public use or purpose by any legally constituted authority, then, in either of such events, this Lease shall terminate on the date when the Lessee no longer has the possession or use of the leased premises, and the rent and other obligations of Lessee hereunder shall be prorated as of said date. If a portion of the leased premises which will not render the leased premises unsuitable for the purposes set forth herein is condemned as set forth above, then in such event, a pro-rata adjustment of the rent payble hereunder shall be made.

Waiver of any breach shall not constitute waiver of any other breach. Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the appropriate officials, as of the date first above written.

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ATTEST:

Richard P. Brinker

Deputy Clerk

By: _____
Secretary

Richard Gregory
Type Name

DADE COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____
Joaquin G. Avino, P.E., P.L.S.
County Manager

GOLD COAST RACKS, INC.

By: _____
President

Richard Gregory
Type Name

(CORP. SEAL)

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ATTACHMENT "A"

PROPERTY DESCRIPTION

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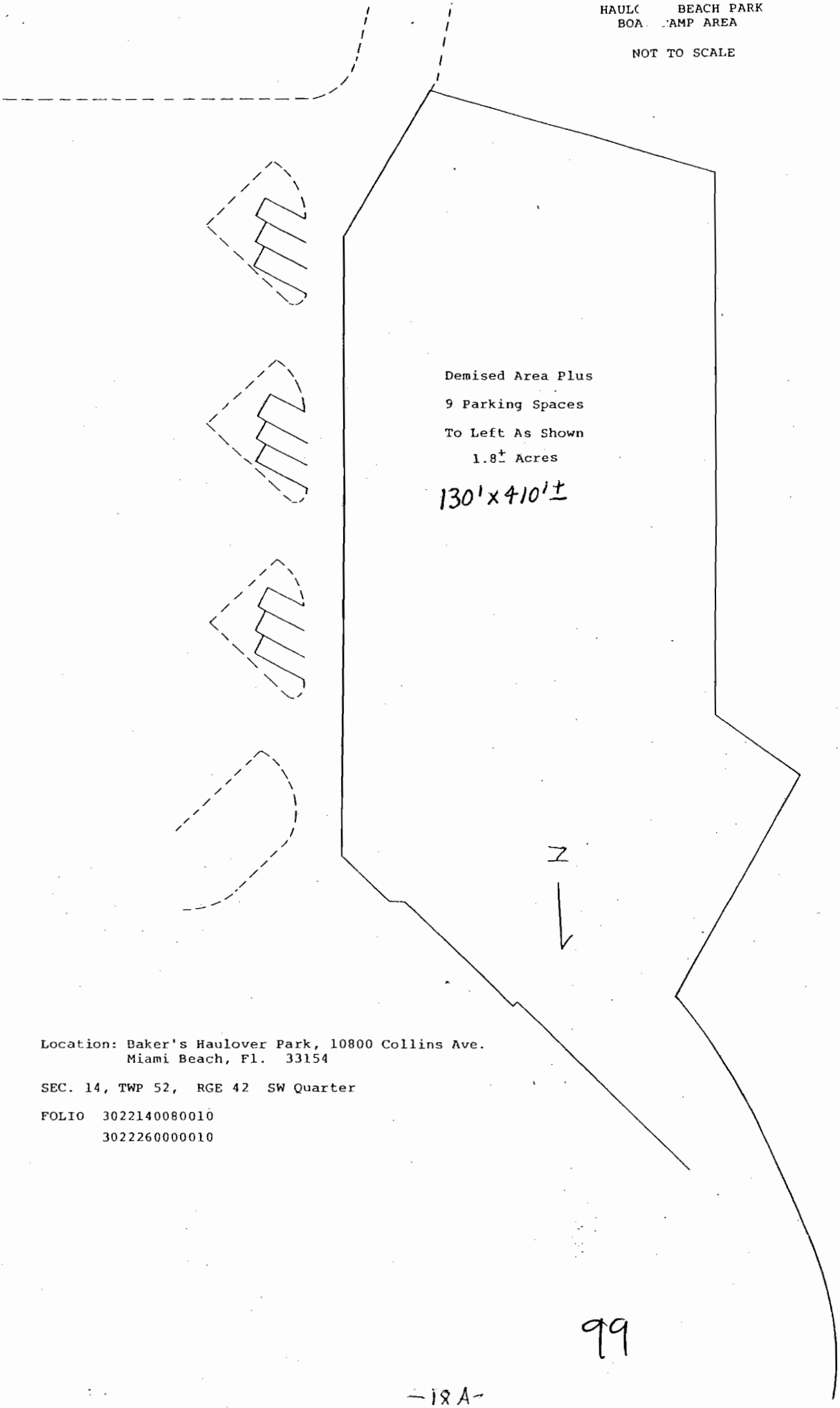
HAULO BEACH PARK
BOA CAMP AREA

NOT TO SCALE



Location: Baker's Haulover Park, 10800 Collins Ave.
Miami Beach, Fl. 33154

SEC. 14, TWP 52, RGE 42 SW Quarter

FOLIO 3022140080010
3022260000010

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ATTACHMENT "B"

CONSTRUCTION RIDER

Lessor: Metropolitan Dade County ("County")
Park and Recreation Department ("Department")

Tenant ("Lessee/Tenant"): Gold Coast Racks, Inc.

Premises: Haulover Beach Park - Boat Dry Storage Facility

This Construction Rider is attached to that certain Lease and Concession Agreement (the "Agreement") between the above referenced parties covering certain premises located in Haulover Beach Park, Miami, Florida more particularly described in Paragraph 7 of the Agreement ("the Facilities"). Words and phrases used in this Construction Rider shall have the same meanings as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Construction Rider and the provisions of the Agreement, the provisions of this Construction Rider will prevail.

I. CONSTRUCTION OF BUILDING AND IMPROVEMENTS ON THE PREMISES.

The building and other improvements that Tenant is to construct on the Facilities shall be constructed in accordance with the provisions of this Section I and Tenant shall expend not less than $700,000 in constructing such buildings and improvements, including furnishings, fixtures, and equipment, including design costs, legal and accounting fees, franchise fees, insurance premiums, premiums for payment and completion bonds, interest paid on financing, lender's fees for interim and permanent financing, takeout and standby fees and mortgage brokerage fees. Dade County shall not be responsible for any costs associated with the construction.

The Department has not sought the required approvals by permitting agencies. The Department believes that a major environmental study (Development of Regional Impact Review, "DRI") may not be required for a dry storage facility of 240 units or less. Whether or not a DRI is required, the Tenant shall be responsible for all costs associated with attaining the required permits, including any DRI costs. The permit process is expected to take several months and be expensive. If a DRI were required, the time and expense would be multiplied.

The permitting process will require approvals by the Department, other County agencies and agencies outside the County. Metropolitan Dade County ("County") makes no warranty of the success of the project or any part of the project nor that the County will approve any activity, facility or procedure necessary to accomplish the project. The County's Board of County Commissioners, Departments, officers, employees and agencies shall have no obligation to approve the project or any part of the project as it may be proposed if such obligation is contrary to laws, statutes, ordinances, policies or procedures or is not in the best interests of the County, as determined solely by the County.

The Tenant hereby agrees to waive all claims and defenses against the County, its Board of County Commissioners, officers, employees and agencies ("County and Agencies") and hold the same County and Agencies harmless from all actions arising out of award of a contract or other agreement based upon this Request for Proposals. The

Tenant's sole recourse against the County and Agencies shall be abandonment of the project and termination of any contract or other agreement. Nothing, however, shall relieve the Tenant of responsibility and obligation to pay the County any monies due the County and Agencies by Tenant or those acting in Tenant's place or for the Tenant at the time of abandonment and termination.

A. Preliminary Plans and Specifications. Within 60 days after the Department notifies Tenant that the County has approved the Agreement, Tenant, at its cost, shall have prepared and delivered to Department five (5) "Preliminary Plans," including one Mylar set for the construction of the building, grounds, access, parking, and related improvements ("Tenant's Project") at the Facilities prepared by an architect or engineer licensed to practice as such in Florida, which Preliminary Plans shall include, and show, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from the Facilities, curbs, gutters, parkways, lighting, design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect Tenant's Project shall have on the Park. Such preliminary plans shall be based on conceptual plans previously submitted by Tenant to Department in Tenant's Proposal. Tenant's Project shall be constructed within the exterior property lines of the premises; provided that required work beyond the Facilities on utilities, access and conditional use requirements will not violate this provision. Tenant's building and other structures shall be aesthetically and functionally compatible with the outdoor setting of Haulover Beach Park.

Within 60 days after Department receives preliminary plans as required in the preceding paragraph, Department shall either approve of them or deliver to Tenant specific objections to them together with Department's proposed solution to each objection. Department shall not be unreasonable in exercising its approval rights hereunder. Tenant shall exercise reasonable diligence in attempting to resolve any objections by Department to the Preliminary Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 30 days after Tenant has received Department's objections, either party shall have the election to thereafter terminate the Agreement upon notice to the other party, the parties being thereafter relieved of any liability hereunder and under the Agreement, except that One Thousand Dollars ($1,000.00) of Tenant's guarantee deposit previously deposited with the County shall be retained as liquidated damages and the remaining Four Thousand Dollars ($4,000.00) of the guarantee deposit previously deposited with the County shall be refunded.

B. Final Plans and Permits. Within 60 days after the Preliminary Plans are approved between the parties as provided in Section IA, Tenant, at its cost, shall cause to be prepared and delivered to Department five (5) sets of final plans, including one Mylar set, and specifications and working drawings ("Final Plans") covering Tenant's Building, which Final Plans must be consistent with the approved Preliminary Plans.

This Agreement is further conditioned upon Tenant being able to obtain any and all permits, licenses, certificates, approvals, and other entitlements for use (hereinafter collectively referred to as "permits") necessary for the construction and operation of any buildings and improvements at the Facilities.

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Not later than the date that Tenant delivers copies of the Final Plans to Department as required in this Section IB, Tenant shall commence seeking from all governmental agencies having jurisdiction over the Facilities and Tenant's Project all such required permits, and Tenant shall exercise due diligence in attempting to obtain such permits.

Subject to the timing requirements contained in the following paragraph, the obtaining of any such permits shall not be considered as complete until any review and/or appeal is finally determined by the highest body authorized to determine same or until the time for such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permit shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal therefrom shall have expired, or if any appeal has been taken, until the appeal has finally been determined.

If Tenant is unable to obtain such permits within 120 days from the date Tenant delivers copies of the Final Plans to Department as herein required, either party shall have the election to thereafter terminate the Agreement upon Notice to the other party; provided, if Tenant is unable to obtain such permits within such period of time due solely as a result of delays caused by such governmental agencies other than the Department, such period of time shall be extended as a result thereof until such permits have been obtained. Except, if such permits are not obtained within 270 days from the date Tenant delivers copies of the Final Plans to Department, notwithstanding the reason therefor, or by such deadline as parties may reasonably agree, either party shall have the election to thereafter terminate the Agreement upon notice to the other party. There shall be no further obligation on the part of the tenant except the liquidated damages mentioned above.

When Tenant obtains all such permits it shall deliver copies of them to Department.

C. Commencement and Completion of Construction of Tenant's Project. Within 15 days from the date that Department receives copies of the permits and authorizations covering construction of Tenant's Project as provided in Section IB, Department shall deliver possession of the Facilities site to Tenant in the condition that is required by Section IIA, and Tenant shall immediately thereafter commence construction of Tenant's Project and diligently pursue completion thereof. The construction of Tenant's Project shall be in accordance with the Final Plans and subject to the provisions of Section ID. The Final Plans shall not be changed and/or modified without Department's consent, which consent shall not be unreasonably withheld or delayed. Department's consent shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

All work in connection with the construction of Tenant's Project shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws.

Tenant shall pay for the cost of constructing access, securing the area, constructing public restrooms with outside access and bringing utilities to Tenant's Project, which shall be metered at Tenant's expense.

Tenant agrees that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, national origin, religion, age, sex or handicap shall be illegally excluded from

participation in, be denied the benefits of, or otherwise be subjected to discrimination. That in the event of breach of any of the above non-discrimination covenants, the Department shall have the right to terminate the Lease and to avail itself of all remedies set forth therein. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

Neither Tenant nor any contractor shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except where based on a bona fide occupational qualification; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts shall include the above non-discrimination provisions.

Tenant's obligation to commence construction of Tenant's Project and diligently pursue completion thereof shall be subject to delays resulting from causes beyond the reasonable control of Tenant including, without limitation, acts of God, inclement weather, and like matters.

Upon completion of construction of Tenant's Project, Tenant shall, at its cost, cause a survey of the Facilities and Tenant's Project thereon and deliver to Department "as built" drawings accurately reflecting Tenant's Project on the Premises. Both parties agree to execute and attach to this Lease a new Attachment A showing the exact location of Tenant's Project on the Premises.

D. Provisions Applicable During Construction of Tenant's Project. In addition to the provisions of the Lease, the following provisions shall be applicable during the period of time that Tenant constructs Tenant's project:

(1) Tenant shall notify Department of Tenant's intention to commence construction of Tenant's Project at least two (2) days before commencement thereof or delivery of any materials.

(2) All construction shall be performed by contractors reasonably approved by the Department. Tenant shall furnish Department with a true copy of Tenant's contract with the general contractor showing a breakdown of costs, and with evidence of such general contractor's financial condition and shall obtain Department's approval thereof which shall not be unreasonably withheld or delayed. The contract shall give Department the right, but not the obligation, to assume Tenant's obligations and rights under that contract if Tenant should default.

(3) Prior to the commencement of any work by Tenant, Tenant shall furnish Department with a bond, as described herein, approved by the Department, which approval shall not be unreasonably withheld. The bond shall be that of a responsible surety company qualified under the terms of the Agreement, licensed to do business in Florida, in an amount not less than the cost of construction of Tenant's Project as determined by Department and shall remain in effect until the entire cost of Tenant's Project shall have been paid in full. The bond shall provide the following, without limitation:

(a) That it is conditioned to secure the completion of Tenant's Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen;

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(b) That the construction work shall be effected by Tenant, the general contractor or, on their default, the surety; and,

(c) That the surety will defend and indemnify Department against all loss, cost, damage, expense and liability arising out of or connected with the construction of Tenant's Project, up to the maximum bond requirement amount.

(4) Tenant shall take out and maintain so-called "builder's risk" or "course of construction insurance" insuring Tenant's Project during the period of construction of Tenant's Project in form and amounts satisfactory to Department, and shall take out and maintain the other insurance that is required by the Agreement. The insurance required herein shall comply with the provisions of the Agreement. Certificates evidencing such insurance shall be provided prior to commencement of work.

(5) No liens shall be attached to the Facilities or any part thereof.

(6) Prior to the commencement of any work, Tenant shall demonstrate to Department's satisfaction that all construction and take-out financing is in place, the Department to approve any and all progress payments within 5 business days after the request therefor.

(7) Tenant is to work closely with the Department in scheduling Tenant's and engaging in construction activity so as not to disrupt Park events. Where conflict may occur, the Department shall solely make the determination as the to the Tenant's right to continue work and the desirability of temporarily halting or continuing activity by the Tenant.

Tenant shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by the Tenant's failure to cease work after verbal or written notice from the Department Director.

II. DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. Department shall deliver physical possession of the Facilities to Tenant on the date that Department is required to deliver possession as required by Section IC in an "as is" condition so that Tenant may commence construction thereon.

In addition, Department shall provide reasonable access to allow the tenant to have utilities brought to the site and to allow Tenant to construct the Facilities provided for herein.

B. Liquidated Damages. It is mutually acknowledged that the assessment of specific damages for the inability to construct the Tenant's Facilities would be too difficult to determine and that the provisions for liquidated damages contained herein are intended to compensate the Department for its efforts in assisting to complete the improvements. No liquidated damages shall accrue to this Tenant.

Tenant: Gold Coast Racks, Inc.
Type Name

By: _____
President

Richard Gregory
Type Name

_____
Secretary

Richard Gregory
Type Name

(CORP. SEAL)

LESSOR: Metropolitan Dade County

By: _____

_____
Type Name

COUNTY MANAGER
Position

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BOND NO. _____

ATTACHMENT "C"

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____ _____ as Principal, and _____ _____, a Corporation of the State of _____ authorized to do business in the State of Florida, as Surety, are held and firmly bound unto DADE COUNTY, FLORIDA (hereinafter referred to as the County), for a period of one year, the sum of _____ ($ _____), for the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this _____ day of _____, 19__.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the County, by Lease and Concession Agreement, dated _____, and in consideration of the rentals percentage fees, covenants and agreements contained therein to be paid and performed by the Principal has granted unto said Principal the right to operate certain concession facilities, in Haulover Beach Park, and more fully described in said Lease and Concession Agreement for a term as set forth in said Agreement, which Agreement is made a part hereof by reference. This Bond shall be effective for the period _____ through _____.

NOW, THEREFORE, if the Principal, its executors, administrators, successors and assigns, shall well and truly pay, or cause to be paid, the rentals and percentage fees and fully and faithfully perform or cause to be performed the services as required by the Lease and Concession Agreement, then this obligation shall be void, otherwise it shall remain in full force and effect.

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ATTACHMENT "D"

LESSEE OWNERSHIP

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Proposed Ownership Of
Gold Coast Racks, Inc.

James Gregory	31.33%
Neil Overman	31.33%
Jay Leader	5%
Richard Gregory	32.33%

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EXHIBIT "A"

Schedule of initially approved activities to be conducted on the leased premises:

Boat Storage;

Boat rental;

Sale of inflatable boats;

Boat brokerage and sale of new and used boats and engines;

Snack bar;

Fuel sales to boats in and out of the water;

Locker rentals

Sale and rental of bait and tackle.

Sale of marine insurance; and

Service and minor repair to vessels

Additional activities may be approved in accordance with the Lease Agreement to which this is an exhibit.