Memorandum

MIAMI-DADE COUNTY

Date:	July 8, 2010
To:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Amended and Restated Lease Agreement with Westrec Equities, Inc. for Development of a New Dry Boat Storage Facility at Bill Bird Marina at Haulover Park and for additional 25 Year Extension

Agenda Item No. 8(M)(1)(C)

This item was amended at the June 7, 2010 Recreation, Culture and Tourism Committee meeting to add the words underlined in Paragraph 3.1 and move Section 12.1(d) in its entirety into a new Section 13.4 of the Amended and Restated Lease Agreement.

Recommendation

It is recommended that the Board approve the Amended and Restated Lease Agreement ("Lease") between Westrec Equities, Inc. ("Westrec") and Miami-Dade County, in order to provide for the development of a new boat storage facility at Bill Bird Marina, new and/or renovated bait and tackle facilities, improvements and renovations to the existing boat basin, and a new parking lot at Haulover Park and to extend the term of the Lease for an additional twenty-five (25) years, such that the Lease shall expire on April 30, 2040.

Scope

Bill Bird Marina is located at the northern end of Haulover Park at 10800 Collins Avenue, Miami Beach. It is open to all residents and visitors of Miami-Dade County. The proposed agreement is expected to have a County-wide impact.

Fiscal Impact/Funding Source

The direct fiscal impact to the County relating to this proposed agreement will be the positive revenue guaranteed through the Amended and Restated Lease Agreement's, Minimum Annual Guarantee (MAG) and projected percentage of gross sales. The MAG amount over the term of the lease will be $21,600,000 with projected percentage of gross payments of $8,450,000 for a projected positive fiscal impact to the County of $30,050,000. Additionally, Westrec will invest a minimum of $11,400,000 in the construction of a first class boat storage facility. No County funds will be used in the construction related to this lease.

Track Record/Monitor

Westrec has operated, managed and maintained the dry boat storage operation and South Point bait and tackle store since May of 1995. Westrec has provided a level of service to the County and to the customers that meets or exceeds the requirements of the current agreement. The remittance of monthly fees has been consistent and timely. Additionally, Westrec has an outstanding track record of providing exceptional customer service and satisfaction.

Westrec Marina Management currently operates over 26 marina facilities in seven (7) states managing over 12,000 wet and dry storage spaces.

The new Agreement will continue to be monitored and managed by Jon Seaman, Miami-Dade Park and Recreation Department (MDPR), Contract Manager.

Background

On July 19, 1988, an agreement (Attachment 1) was executed with Gold Coast Racks, Inc. for development and operation of a dry boat storage facility at Haulover Park. On May 1, 1995 the agreement (Attachment 2) was assigned to Westrec who has successfully operated the dry boat storage facility since that time. The dry boat storage facility currently provides for 265 dry rack boat storage spaces and includes bait and tackle and fuel dock operations, towboat services, operation of boat rental services and a snack bar.

Miami-Dade Park and Recreation Department (MDPR), working with the Department of Environmental Resource Management (DERM), has identified a location compatible with the Manatee Protection Plan for additional boat storage spaces to accommodate the growing boating industry and to offset the loss of dockage space resulting from commercial development of waterfront properties previously serving the boating community. Haulover Marina is cited in the Manatee Protection Plan as a facility recommended for increased boat storage facilities. Consequently, a Development of Regional Impact study is not required for this project.

The current lease with Westrec for the existing dry boat storage facility, including all options to renew, ends April 2015 and does not provide for capitalization of a large capital investment in refurbishing or rebuilding the facility. This new Lease requires Westrec to invest no less than $11,400,000 to construct capital improvements at Haulover Park to include a 508-slip (243 additional slips), fully enclosed dry storage facility in the area north of the existing open rack system as well as renovation of the existing South Point bait and tackle store, demolish and replace former dry rack storage facility, remove existing underground fuel tanks and replace entire area with a new paved parking lot. When construction is complete, the Marine Center fuel dock will be eliminated and the Point Store and fuel dock will be fully renovated. Additionally the new boat storage facility will be able to accommodate larger boats as the average length and beam width and weight of boats increases due to improvements in lift technology and storage space design.

Upon the completion of construction and beginning no later than May 1, 2015, the guaranteed minimum annual rent paid by Westrec to the County will increase from $65,000 per year to $300,000 for year 1, $400,000 for year 2, $500,000 for year 3, $600,000 for year 4, $650,000 for year 5, $700,000 for year 6, $750,000 for year 7, $800,000 for year 8, $900,000 for year 9, and $1 million per year in years 10-25. Additionally, for years 1-12, starting in 2015, Westrec shall pay the County the greater of the minimum annual rent or 18% of gross revenues.

Lease Year	Minimum Annual Guarantee (MAG)	Projected Percentage Of Gross (18%)
2015	$300,000	$570,695
2016	$400,000	$584,692
2017	$500,000	$655,980
2018	$600,000	$672,380
2019	$650,000	$692,551
2020	$700,000	$713,328
2021	$750,000	$734,728
2022	$800,000	$756,759
2023	$900,000	$775,689
2024	$1,000,000	$798,959
2025	$1,000,000	$822,928
2026	$1,000,000	$847,616
2027 - 2040	$1,000,000	MAG Only

With the capital investment of $11,400,000, combined with the guaranteed minimum annual rent payments through year twelve (12), the present value of the project is $21,000,000 and the discount rate used for this calculation was 5%. State Statue (F.S. 125.35) allows for the extension of a lease for an additional term not to exceed 25 years, provided that the improved value of the lease has an appraised value in excess of $20 million. The estimated revenue to the County is in excess of $21,000,000.00 over the twenty-five year term.

The proposed lease terms were vetted by the Lambert Advisory Group, Inc. a firm specializing in marina cost recovery analysis and economic feasibility related to marina facility development. The Lambert Advisory Group strongly concurred with staff that the payment terms and correlating capital development in the proposed lease will equate to revenues to the County that significantly exceed similar agreements with other municipalities in this region.

This new facility will accommodate boats that are bigger, longer, wider and heavier, keeping up with trends in the industry. The facility will also increase the capacity to an additional 243 new boat storage spaces. In addition to the increased capacity of the facility, the relocation of the boat barn will allow for the opening of three (3) additional boat ramps available to the boating public and an increase in boat trailer parking at the marina. Upon completion, Westrec will demolish, upgrade and refurbish the current dry rack storage leased area and pave it to provide additional vehicle and trailer parking areas and that property shall revert back to the County. This will further facilitate the development of a new traffic plan for the park. Westrec has also agreed to upgrade and renovate its existing bait and tackle store at the southern end of the park.

This Agreement is in the best interest of Miami-Dade County and revenues resulting from this agreement will benefit the entire County.

Attachments

Alex Muñoz,
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 8, 2010

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

SUBJECT: Agenda Item No. 8(M)(1)(C)

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(C)
7-8-10

RESOLUTION NO. _____

RESOLUTION APPROVING THE AMENDED AND RESTATED LEASE AGREEMENT BETWEEN WESTREC EQUITIES, INC. AND MIAMI-DADE COUNTY PURSUANT TO SECTION 125.35(1)(B)2, FLORIDA STATUTES; AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE AMENDED AND RESTATED LEASE AGREEMENT AND TO EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

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:

Section 1. This Board finds that the improved value of the lease, under the terms of the Amended and Restated Lease Agreement between the County and Westrec Equities, Inc., ("Agreement") in substantially the form attached hereto, is valued at over $20,000,000.

Section 2. This Board, pursuant to Section 125.35(1)(b)2, approves the Agreement, in substantially the form attached hereto, including the twenty-five (25) year extension on the term of the original lease, and authorizes the County Mayor or Mayor's designee to execute such Agreement on behalf of the County and to exercise any and all other 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:

5

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2010. 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.

Monica Rizo
Hugo Benitez

AMENDED AND RESTATED LEASE AGREEMENT

Between

MIAMI-DADE COUNTY, as Lessor

and

WESTREC EQUITIES, INC., as Lessee

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B Construction Rider

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "**Lease**" or the "**Agreement**") is made and entered into as of the Effective Date by and between MIAMI-DADE COUNTY (the "**County**" or the "**Lessor**") and WESTREC EQUITIES, INC. (the "**Lessee**"), each of which may also be referred to as a "**Party,**" and which may be referred to collectively as the "**Parties.**" For purposes of this Lease, the "**Effective Date**" shall be the date upon which the last of the Parties has executed this Lease, following all applicable approvals.

RECITALS

WHEREAS, the County entered into an original lease agreement with Gold Coast Racks, Inc. ("**Gold Coast**") for an initial period of ten (10) years, with one (1) five (5) year renewal option, for the development and operation at Haulover Beach Park a/k/a Haulover Fishing Pier a/k/a Bill Bird Marina (the "**Park**") of a boat storage facility, bait and tackle facility (the "**Facilities**"), fuel sales and related services, pursuant to public bidding and awarded by County Resolution No R-1051-88, July 19, 1988 (the "**Original Lease**"); and

WHEREAS, the Original Lease was amended by Addendum on November 21, 1989, pursuant to Resolution No R-1393-89, to permit assignment by Gold Coast to Haulover Resort Marina, Inc. ("**HRMI**") and to allow a one time leasehold mortgage; and

WHEREAS, the Original Lease was further amended to include the bait and tackle and fuel facilities on the southerly end of the Park (such additional facilities being included hereafter in the definition of "**Facilities,**" along with all other areas and improvements falling under the definition of "**Facilities**" found in the Lease), and increased rent by $1,500.00 and granted a waiver of that rent for 36 months in exchange for a donation to the County on September 25, 1990, pursuant to Resolution No R-1029-90; and

WHEREAS, the Original Lease was further amended on October 1, 1991, pursuant to Resolution No R-1110-91, to apply the remaining rent waiver against current outstanding arrearages; and

WHEREAS, HRMI filed for protection under Section 1121(a) of Title 11, United States Code (the "**Bankruptcy Code**") on January 17, 1994 and offered a plan of reorganization (the "**Plan of Reorganization**") which was accepted by the Bankruptcy Court; and

WHEREAS, Lessee Westrec Equities, Inc. assumed ownership of the assets of HRMI as part of the Plan of Reorganization; and

WHEREAS, in furtherance of the Plan of Reorganization, the County and Lessee Westrec Equities, Inc. entered into that certain Assignment and Amendment of [Original] Lease dated May 1, 1995 (pursuant to Resolution No R-409-95), pursuant to which the Lease was assigned to Lessee, and the term of the Lease was restarted for an initial period of ten (10) years, with two (2) five (5) year renewal options (each a "**Renewal Option**"), for a total period of twenty (20) years, expiring (if both renewals were exercised) on April 30, 2015, for the operation of the boat storage and ancillary Facilities (the term "**Original Lease**" henceforth being deemed

to include all of the above-described amendments; and all capitalized terms used herein which are not separately defined having the meanings given to them in the Original Lease); and

WHEREAS, the County and Lessee desire further to amend and restate the Original Lease in its entirety pursuant to this Agreement to allow major capital renovation and expansion of the dry boat storage facility [by building a new Boat Barn (defined below), which will include new bait and tackle facilities], renovate the existing bait and tackle store (located at the South end of the Park), and to renovate the boat launch basin (all of which are or will become part of the Facilities); and

WHEREAS, this Amended and Restated Lease Agreement is being made pursuant to Florida Statutes, Section 125.35(1)(b)(2), which allows for the modification or extension of an existing lease of real property for an additional term not to exceed 25 years, where the improved value of the lease has an appraised value in excess of $20,000,000.00; and

WHEREAS, Lessee has exercised the first and second Renewal Options, thereby extending the term of the Lease (the "**Current Term**") from May 1, 2005 to April 30, 2015; and

WHEREAS, Lessee has agreed to and does hereby accept with all its terms and conditions this Amended and Restated Lease Agreement.

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants, rights and obligations contained in this Amended and Restated Lease Agreement, the adequacy of which is hereby accepted and acknowledged by the parties, the County and Lessee Westrec Equities, Inc. agree that the foregoing recitals are correct, and further agree as follows:

ARTICLE 1

DEMISE AND TERM

1.1 **The Premises**. Lessor hereby leases to Lessee, and Lessee hereby leases and accepts from Lessor, the real property described in **Exhibit "A-1"** (the **"Point"**), **Exhibit "A-2"** (the **"Original Premises"**), and **Exhibit "A-3"** (the **"Additional Premises,"** and together with the Point and the Original Premises, the "**Premises**" or the "**Leased Premises**"), together with all improvements (**"Improvements"**) now or hereafter located on such real property and the use rights described in **Sections 1.2 and 1.3** below.

(a) The Parties recognize and agree that it is their intention that certain Improvements be made to the Additional Premises, following which the Original Premises will be returned to the County (all as set forth below), and the terms "**Premises**" and "**Leased Premises**" will from that point forward only include the Point and the Additional Premises.

(b) Lessee shall (to the extent not already done) cause a survey or surveys to be done of the various portions of the Leased Premises (each a "**Survey**"). After any Survey is completed and accepted by Lessee (including any revision of a previously performed and delivered Survey), Lessee shall provide a copy of such Survey to the County Park and Recreation Department (the "**Department**"), and following the Department's approval of the Survey, the Survey shall be substituted for **Exhibits A-1, A-2, and/or A-3**, and thereafter be deemed part of this Lease.

1.2 **Exclusive Use Rights**. During the term of this Lease, and subject to the other provisions of this section, Lessee shall have an exclusive right (i) to use the seawalls, docks, wharfs and like improvements which are adjacent to the Leased Premises, as well as the boat basin (the "**Boat Basin**") serving such Leased Premises (which will be shown in greater detail on the Survey), and (ii) to provide certain services within the Park, to wit: boat dry storage, fuel sales, and retail sales of bait, tackle and similar boating and fishing supplies (but expressly excluding sales of food and beverages, for which Lessee shall only have non-exclusive rights).

1.3 **Non-Exclusive Use Rights**. During the term of this Lease, and subject to the other provisions of this section, Lessee shall have a non-exclusive right to offer any other service or sell any item directly related to the operation of the Facilities, including but not limited to sales of food and beverages and (subject to Department approval) to offer other services or sell any item which can lawfully be offered or sold within the Park. The County can likewise offer (or enter in to an agreement with a third party to offer or sell) within the Park any other service or sell any item which can lawfully be offered or sold.

1.4 **Term; Lease Year**. The term of the Original Lease (the "**Original Term**") commenced in 1988 and would, but for the provisions of this Agreement, terminate on April 30, 2015 (the "**Original Termination Date**"). Pursuant and subject to the provisions of this Agreement, the term of the Lease has been extended for the period commencing May 1, 2015 and terminating April 30, 2040 (the "**Extension Term,**" and with the Original Term, the "**Term;**" and with April 30, 2040 henceforth being referred to as the "**Termination Date**"). For purposes of this Lease, the phrase "**Lease Year**" shall refer to each twelve (12) month period running from May 1 through April 30 of the ensuing year.

1.5 **Additional Services and Space**. The County's Park and Recreation Department (the "**Department**"), at its discretion (exercised by its Director, who will act for the Department in all instances required or permitted by this Lease), may allow the Lessee to provide additional services and/or use additional space adjacent to the Leased Premises or elsewhere within the Park, upon such terms as the Parties may agree. Such services and/or facilities may also be provided by Lessee under a sub-contract. The terms and conditions, including payment of fees to the County, of any such sub-contract shall be subject to the prior approval of the Department.

ARTICLE 2

RENT

2.1 **Initial Rent Obligation**. During the initial portion of the Term of this Lease, Lessee covenants and agrees to pay to Lessor annual rent ("**Rent**") for each Lease Year, as follows:

(a) Lessee shall, from the Effective Date until the date (the "**Rent Change Date**") which is the earlier of (i) the Original Termination Date and (ii) the "**Barn Completion Date**" (defined below), pay Rent to the County in an amount equal to the greater of (X) a guaranteed monthly rental payment (the "**Initial Guaranteed Rent**") in the amount due under the Original Lease (i.e., the sum of $5,500.00 per month), and (Y) a percentage of gross revenues generated by certain of the Facilities in any particular month of the Term (the "**Initial Percentage Rent**"), to wit: the combination of (1) ten (10%) percent of gross rack storage fees collected by Lessee, plus (2) 7% of boat rental charges received by Lessee, plus (3) five (5%) percent of towing charges received by Lessee, plus (4) three (3%) percent of bait and tackle and fishing and boating supplies sold by Lessee, plus (5) three (3%) percent of all boat repair charges collected by Lessee, plus (6) a percentage of all food and beverage sales made and received by Lessee (the "**F&B Sales Percentage**"). The F&B Sales Percentage is three (3%) percent of the first $3,000.00 of gross sales of food and beverages by Lessee; five (5%) percent of the next $2,000.00 of gross sales of food and beverages (i.e., gross sales in excess of $3,000.00, up to $5,000.00); and seven (7%) percent of gross sales of food and beverages in excess of $5,000.00.

(b) Initial Guaranteed Rent shall be payable in equal monthly installments, in advance, on the first day of each calendar month. To the extent that Initial Percentage Rent is greater than Initial Guaranteed Rent for any month (such excess being hereafter defined as the

"**Excess Percentage Rent**"), the Excess Percentage Rent shall be paid to the County on or before the 20th day of the month following the month for which the Excess Percentage Rent is due.

2.2 **Subsequent Rent Obligation**. From and after the Rent Change Date, Lessee covenants and agrees to pay to Lessor annual Rent, as follows:

(a) Lessee shall pay Rent to the County in an amount equal to the greater of (X) a guaranteed rental payment (the "**Subsequent Guaranteed Rent;**" and with Initial Guaranteed Rent, simply "**Guaranteed Rent**"), and (Y) a percentage of gross revenues generated by certain of the Facilities in any particular month of the Term (the "**Subsequent Percentage Rent;**" and with Initial Percentage Rent, simply "**Percentage Rent**").

(b) Subsequent Guaranteed Rent shall be $300,000.00 per year, commencing on the first day of the first month following the Rent Change Date, and through the first full Lease Year of the Extension Term (i.e., if the Rent Change Date is on a date other than the first day of the first Lease Year of the Extension Term). From and after the first Lease Year of the Extension Term, annual Subsequent Guaranteed Rent shall be paid according to the following schedule:

Year 2:	$400,000.00;
Year 3:	$500,000.00;
Year 4;	$600,000.00;
Year 5:	$650,000.00;
Year 6:	$700,000.00;
Year 7:	$750,000.00;
Year 8:	$800,000.00;
Year 9:	$900,000.00;
Years 10 -12:	$1,000,000.00.

(c) Subsequent Percentage Rent shall be a percentage of gross revenues generated by certain of the Facilities in any particular month of the Term, to wit: the combination of (1) eighteen (18%) percent of gross rack storage fees collected by Lessee, plus (2) four (4)% percent of gross retail sales by Lessee for all items other than fuel (i.e., boat rental charges, towing charges, bait and tackle and fishing and boating supplies, boat repair charges, and food and beverage sales).

(d) Subsequent Guaranteed Rent shall be payable in equal monthly installments, in advance, on the first day of each calendar month. To the extent that Subsequent

Percentage Rent is greater than Subsequent Guaranteed Rent for any month (such excess falling within the definition of "**Excess Percentage Rent**"), the Excess Percentage Rent shall be paid to the County on or before the 20th day of the month following the month for which the Excess Percentage Rent is due.

2.3 **Rent After Year 12 of the Extension Term**. Commencing on the first day of the 13th Lease Year of the Extension Term, (i) Lessee covenants and agrees to pay to Lessor annual Guaranteed Rent in an amount equal to $1,000,000.00; and (ii) Lessee shall have no further obligation to pay Percentage Rent.

2.4 **Additional Provisions Regarding Rent**.

(a) In addition to and concurrently with each monthly rental payment made under this Lease, Lessee shall pay to Lessor all applicable sales and use taxes payable with respect to said Rent. 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 Rent and Percentage Rent payments, unless otherwise determined by the State of Florida.

(b) Rent shall be payable in the form of checks made payable to the "Miami-Dade County Board of County Commissioners" delivered to Lessor c/o Park and Recreation Department, Finance Management Division, 3rd Floor, 275 N.W. 2nd Avenue, Miami, FL 33128, or at such other address as Lessor may specify in writing from time to time.

(c) For purposes of this Lease, the terms "**gross sales**," "**gross receipts**" and similar terms shall mean all monies paid to or considerations of determinable value received by Lessee from any source whatever, generated by or in connection with its operation upon the Premises other than sales of fuel; provided, however, that such terms shall not include (i) sums collected for sales tax or liquor tax or similar taxes (to be remitted to the Florida Department of Revenue), (ii) any other taxes imposed by law which are separately stated to and paid by customer and directly payable by the Lessee to a taxing authority, (iii) sales refunds, (iv) specifically authorized (by the Department) discounts, or (v) gratuities remitted to employees of Lessee.

(d) Any payment of Rent not made when due shall bear interest at the statutory rate per annum then in effect in the State of Florida (the "**Default Rate**") from the date of Payment Default Notice until paid.

2.5 **Statements**. Lessee shall furnish to Lessor statements of its computation of Percentage Rent (which shall include a breakdown of gross receipts by major category) concurrently with each payment of Excess Percentage Rent (or if no such payment is made, on of before the date such Excess Percentage Rent payment would have been due, had their been Excess Percentage Rent, to wit: the 20th of the month). Lessee shall keep full and accurate records of account, books and other pertinent data of gross receipts and such books and records shall be kept for a period of at least five (5) years after the close of each calendar year. The receipt by Lessor of any statement or any payment of Rent for any period shall not bind it as to the correctness of the statement of the payment.

2.6 **Security Deposit**. Within thirty (30) days of the Effective Date, Lessee shall deliver to Lessor an amount equal to three (3) months of Initial Guaranteed Rent, to wit: the sum of $16,500.00, LESS any security deposit currently held by Lessor, to secure Lessee's performance of Lessee's obligations under this Lease. On or before April 30, 2015 (unless the Barn Completion Date shall have earlier occurred), Lessee shall deliver to Lessor an additional $58,500.00, bringing the total amount held to $75,000.00 (such amount(s) hereinafter being referred to as "**Security Deposit**"), to which the following terms and conditions shall apply: Within thirty (30) days after the Barn Completion Date Lessor shall refund $58,500.00 of the Security Deposit to Lessee. Thereafter, if Lessee performs all of Lessee's obligations hereunder, said Security Deposit, or so much thereof as has not thereto been applied by Lessor, shall be returned to Lessee at the end of the Term hereof. The Security Deposit held by Lessor shall not bear interest, and Lessor shall not be required to return to Lessee any sum as interest, in addition to any portion of the Security Deposit which Lessor is obligated to return pursuant to this paragraph. Additionally, if Lessor draws upon any portion of the Security Deposit, Lessee hereby agrees to restore the security to its original amount within seven (7) business days of receiving notice by the County that the Security Deposit was drawn upon. The Lessee may, in lieu of a cash Security Deposit, provide Lessor with a performance bond or irrevocable letter of credit in the same amount (with such bond or letter of credit being conditioned on the full and

faithful performance of all covenants of this Lease and being valid, or renewable, for the entire Term).

ARTICLE 3

CONSTRUCTION OF IMPROVEMENTS; PROJECT OPERATIONS

3.1 **Construction of Certain Improvements**. It is the intent of the Parties that Lessee do certain repairs and renovations and construct certain improvements to the Premises (the "**Capital Improvements**"), including but not limited to (i) constructing a new enclosed boat storage building (the "**Boat Barn**") capable of storing approximately 508 boats, which will be built upon the Additional Premises and which will contain a new bait and tackle shop; (ii) improving and renovating the existing Boat Basin to provide a new launch area for the Boat Barn; (iii) other improvements and renovations to existing Facilities, including but not limited to renovating the existing Facilities at the Point; and (iv) at Lessor's request made after the Barn Completion Date, demolishing and removing the existing dry stack boat storage racks on the Original Premises, completely removing the underground fuel storage tanks and associated piping/dispensers from the Original Premises and providing a completed Tank Closure and Assessment Report as required by DERM, and the paving and striping of the Original Premises (all of the items set forth in this **Subsection 3.1(iv)** hereinafter referred to as the "**Reclamation**") for parking purposes (collectively, the "**Project**"), such Reclamation to be completed within eighteen (18) months of delivery of the Reclamation Notice (defined below), unless unforeseen conditions prevent completion within such time frame (in which case, the Reclamation will be completed as soon as reasonably practicable) .

(a) Lessee shall spend an amount not less than Eleven Million Four Hundred Thousand Dollars ($11,400,000.00) on the Project. Of such amount, Lessee shall spend no less than Ten Million Dollars ($10,000,000.00) on so-called hard construction costs in connection with the Project (including demolition and mitigation). Additionally, Lessee shall obtain Permits for construction of the Boat Barn, and spend such amount (less only the costs allocated for Reclamation and mitigation and similar efforts which are expected to take place during the Post-Construction Phase) on or before April 30, 2015; provided, however, that in the event that notwithstanding Lessee's commercially reasonable efforts (or due to force majeure) Lessee is unable to spend at least that amount and/or complete construction of the Boat Barn by April 30,

2015, Lessee shall so advise the County (by delivering written notice to the County Manager), and the deadline for such minimal spending and completion of the Boat Barn will be extended for up to one (1) year; i.e., to April 30, 2016.

(b) The Parties recognize and understand that the Project will require a number of different permits (each a "**Permit**") from various governmental entities (each a "**Governmental Entity**"), including but not limited to the County, and will generally be accomplished in three (3) phases (each a "**Phase**").

(i) The Governmental Entities which may have to review and/or approve and/or issue a Permit in connection with the Project include (A) the Department of Environmental Resource Management ("**DERM**") of the County, (B) the Department of Environmental Protection ("**DEP**") of the State of Florida, (C) the Planning and Zoning Department of the County (the "**Building Department**"), (D) the U.S. Army Corps of Engineers (the "**USACE**"), and (E) the South Florida Water Management District ("**SFWMD**").

(ii) The Phases of the Project include (A) the preparation of general plans for the Project for submission to DERM, the DEP and the USACE, in order to get their approval for the Project, and the preparation of specific plans for the construction of the Boat Barn for submission to Building Department (the "**Permitting and Design Phase**"), (B) the construction of the Boat Barn and other Improvements (the "**Construction Phase**"), and (C) the Reclamation of the Original Premises and ongoing mitigation and similar efforts required any Governmental Entity (the "**Post-Construction Phase**").

(c) The Construction Phase will be deemed to have been completed when the Boat Barn is substantially completed and a permanent or temporary certificate of occupancy or certificate of use (as appropriate, a "**CO/CU**") has been issued for the Boat Barn, such that Lessee can commence utilizing the Boat Barn for its intended purposes, with the date upon which the Construction Phase is deemed to have been completed being defined herein as the "**Barn Completion Date.**" The Parties acknowledge that the Phases may overlap.

(d) All Capital Improvements made as part of the Project shall be deemed to be and fall within the definition of "**Improvements,**" as that term is used herein, and title to all such Improvements shall at all times following their completion be deemed to be owned and held by the County.

(e) The Parties further recognize and agree that until such time as Lessee notifies the County in writing (the "**Possession Notice**") that it needs to obtain and take possession of the Additional Premises for the purpose of commencing the process of constructing the Boat Barn and/or making other required Capital Improvements (the "**Pre-Possession Period**"), the County shall retain possession and control of the Additional Premises and be fully responsible for such Additional Premises and all activities which occur on or about the Additional Premises (and to the extent that Lessee may be named as a defendant in any action arising out of the use or otherwise in connection with the Additional Premises through no fault if its own during such Pre-Possession Period, the County will indemnify and hold Lessee harmless for all costs, damages and expenses incurred by Lessee, subject to the provisions of Section 768.28 Fla. Stat.). Without limiting the foregoing, the County may allow members of the public to utilize the Additional Premises for parking purposes during the Pre-Possession Period. The County may not, however, use or permit any use of the Additional Premises which could or would reasonably be expected to have an adverse impact upon the Project and/or the timing of completion of the Capital Improvements. The Possession Notice shall specify a date certain upon which Lessee shall take possession and control of the Additional Premises, and on such date (which shall be no less than thirty (30) days from the date of such Possession Notice) Lessee shall be entitled to take exclusive possession and control of the Additional Premises. Without limiting the foregoing, Lessee may install fencing and/or take other measures to insure that Lessee has exclusive possession and control of the Additional Premises.

(f) At any time after the Barn Completion Date, Lessor may notify Lessee that Lessor requires that Lessee undertake the Reclamation of the Original Premises (such notice being defined as the "**Reclamation Notice**"). Following receipt of the Reclamation Notice Lessee shall use commercially reasonable efforts to undertake the Reclamation, at Lessee's sole cost and expense, including but not limited to (i) filing and prosecuting of all appropriate applications for the demolition of the existing dry stack boat storage racks on the Original Premises and the paving and striping of the Original Premises so that it can be used for parking purposes, (ii) the cost of all applicable Permits for such Reclamation, and (iii) the cost of the Reclamation itself. Unless and until such time as the Reclamation is completed and appropriate Governmental Entities have approved same, Lessee shall remain in possession and control of the Original Premises and the Improvements located thereon. At such time as the Reclamation is

completed and appropriate Governmental Entities have approved same (the "**Turnover Date**"), Lessee shall notify Lessor of same. As of the Turnover Date the Original Premises shall no longer be considered part of the Leased Premises, and Lessee shall have no further rights or obligations in connection with the Original Premises.

3.2 **General Construction Standard**. All Capital Improvements made by Lessee shall be built in accordance with applicable building codes, and they shall be constructed in good and workmanlike manner in accordance with all requirements of all departments, boards, bureaus, officials and authorities having jurisdiction thereof, and otherwise in accordance with the Construction Rider attached hereto as **Exhibit "B."** All necessary permits for such construction shall be obtained by Lessee at Lessee's sole expense. No provision of this section shall limit Lessee's obligations under **Article VIII**.

3.3 **Architect and Engineer Approvals**. The plans and specifications for any Improvements shall be prepared by a duly qualified architect and/or engineer licensed in the State of Florida and paid by Lessee for that purpose. Lessee shall submit all preliminary plans and specifications for any planned Improvements to the Department for the Department's written approval prior to the start of any construction, in accordance with the Construction Rider. Such approval shall not be unreasonably withheld by Lessor in its capacity as Lessor. Such approval, if given, shall not constitute an assumption by the Lessor of any liability for the design, engineering or structural integrity of the Improvements proposed to be erected by Lessee. Any disapproval by Lessor shall specify in detail the reason for such disapproval. Should Lessor not give Lessee written notice of disapproval of preliminary plans and specifications delivered to it pursuant to this paragraph within the time frames set forth in the Construction Rider, Lessor shall be deemed to have given its approval.

3.4 **Due Diligence**. Lessee shall prosecute construction of all Capital Improvements on the Premises to completion with due diligence, subject however, to delays caused by force majeure. Provided, however, that in the event that during the Permitting Phase Lessee discovers an environmental or similar condition which Lessee reasonably believes will make the Project economically unfeasible, Lessee may cancel this Lease, effective as of April 30, 2015 by providing notice of cancellation to Lessor. Should Lessee not cancel the Lease, Lessee shall be responsible for all environmental and similar mitigation efforts, at its cost.

3.5 **Prerequisites to the Start of Construction**. No construction shall be commenced unless the following shall have first occurred:

(a) Lessee shall have obtained all necessary Permits for the start of construction.

(b) Lessee shall have delivered to Lessor satisfactory proof all insurance required by this Lease has been procured in connection with the construction.

(c) Lessee shall deliver to each contractor, subcontractor and materialman (of whom Lessee has knowledge) performing services or furnishing materials for Improvements a written notice stating that this Lease provides that the interest of the Lessor in the Leased Premises shall not be subject to liens for Improvements made by Lessee, and concurrently Lessee shall furnish a copy of said notice(s) to Lessor.

3.6 **Notice of Commencement of Construction**. Lessee shall give Lessor no less than five (5) business days' prior written notice before the commencement of any work of improvement on, or delivery of construction materials to, the Premises. Lessor reserves the right at any time and from time to time to post and maintain on the Premises or record in the public records a memorandum of lease or such notice of non-responsibility or other notices as may be necessary to protect Lessor against liability for liens, as the interest of Lessor in the Leased Premises shall not be subject to liens for Improvements made by Lessee.

3.7 **Ownership of Improvements**.

(a) During the term of this Lease, all Improvements existing upon the Premises at the Effective Date of this Lease shall be the property of Lessor, and all Improvements existing upon the Premises which are constructed by Lessor or Lessee after the Effective Date shall be the property of Lessor from and after the completion of construction.

(b) Upon such expiration or earlier termination, Lessee shall surrender the Premises to Lessor free and clear of all liens and encumbrances other than those in effect as of the date hereof, current non-delinquent taxes and matters consented to by Lessor. Provided, however, and anything contained herein to the contrary notwithstanding, in the event that this Lease terminates prior to the originally contemplated termination date as a result of a condemnation; the provisions of **Section 9.4** shall apply.

(c) All personal property purchased by Lessee for use on the Premises shall remain the property of Lessee regardless of termination of this Lease, free and clear of any lien in favor of Lessor. However, Lessee shall remove from the Premises all such personal property on or before the Termination Date of this Lease. If this Lease shall be terminated for any reason before its scheduled Termination Date, Lessee shall be deemed to have been given a reasonable time, not to exceed 60 days, to remove its personal property after such early termination.

3.8 **Operational Matters**.

(a) 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.

(b) 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. 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. 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. Lessee shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.

(c) The Lessee shall hire and assign a full-time qualified, experienced facility manager (the "**Facility Manager**") or management company for its operations. Said Facility Manager (or a representative of same, if the Facility Manager is a management company, in which case the term "Facility Manager" will also apply to the designated representative of the management company) 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 Facility Manager (or representative) is not on duty or available, there shall be a designated assistant manager. The Facility 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 and phone numbers of the Facility Manager and assistant manager. The County agrees that Westrec Marina Management is an acceptable Facility Manager.

(d) 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. 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.

(e) 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 or delayed: (i) use of any type of vending machines, inside or outside of any building within the Leased Premises; (ii) changes from originally approved hours of operation, specifications, business activities, signage, and graphics; (iii) any use of the County's, Department's, Park's or Facility's name. Further, it is understood by the Lessee that should any of the above items be disapproved, Lessee may offer alternative solutions.

(f) 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 Lessee's operations shall not unreasonably 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 the Park. The Lessee agrees that a reasonable determination by the Department will be accepted as final in evaluating its activities which unreasonably infringe on the rights of others and that Lessee will fully comply with any decisions on this matter.

ARTICLE 4

TAXES AND ASSESSMENTS, PERMITS AND LICENSES

4.1 **Payment of Obligations**. Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interest in the Leased Premises, and in connection with its operations under this Agreement (collectively, the "**Impositions**"); provided, however, that Lessee shall not be deemed to be in default of its obligations under this Agreement for failure to pay such Impositions pending the outcome of any legal proceedings instituted to determine the validity of such taxes and/or other costs.

4.2 **Payment of Permitting and Licensing Fees**. 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.

ARTICLE 5

MAINTENANCE AND REPAIRS; SECURITY; UTILITIES

5.1 **Lessee Required to Maintain Premises and Improvements**. Throughout the term of this Lease, Lessee, at its sole cost and expense, shall maintain the Leased Premises in good and serviceable condition and repair, in first class condition, ordinary and reasonable wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of all Governmental Entities having jurisdiction over the Leased Premises. Lessee shall promptly and diligently repair, restore, and replace the Improvements as required to comply with this section, except as expressly permitted to the contrary in writing by the Department.

5.2 **Lessor's Approval**. In performing its obligations under this Article, Lessee shall not undertake any work of maintenance, repair or reconstruction without having received the prior written approval of Lessor with respect to such work, if Lessee's reasonable estimate of the cost of such work is in excess of $250,000.00. Except as otherwise permitted by this Lease, Lessee shall not materially alter, modify, demolish, remove or replace any Improvement, regardless of cost, without either complying with the provisions of the Construction Rider or otherwise having received the prior written approval of Lessor with respect thereto. Notwithstanding any other provision of this Lease, the prior written approval of Lessor shall not be required in connection with any emergency work of maintenance, repair or reconstruction,

provided that Lessee shall give to Lessor notice (which may for emergencies be by telephone) of any such emergency work as soon thereafter as reasonably feasible.

5.3 **Utilities; Services**. Lessee shall pay all charges for gas, water, sewer, electricity, telephone and other utility services used on the Leased Premises.

(a) Lessee shall maintain all utilities within the Leased Premises including drains, sewer pipes, air conditioning, plumbing and electrical lines, services, outlets, and where required by the County, meters to monitor utility usage.

(b) Lessee, at its own expense, will be responsible for connection of existing water, sewer, electric and any other utility within the Leased Premises (the County being responsible for bringing such utilities to the Leased Premises). Separate metering for electric will be required, and expense to be paid by Lessee.

(c) The Lessee shall, at its sole cost, provide the following services within the Leased Premises: (i) janitorial service, (ii) solid waste removal, (iii) pest control, (iv) garbage and trash collection, and (v) maintain public restrooms within the Leased Premises per approved plans and specifications.

(d) The County shall, at its sole cost, provide the following services: (i) electrical service as existing within the Park; (ii) water facilities as existing within the Park; (iii) sewage collection facilities as existing within the Park; (iv) janitorial service for the areas of the Park that are not part of the Leased Premises.

5.4 **Security**. Lessee shall be obligated to provide security within the Leased Premises, at its cost. Lessor shall provide security for the remainder of the Park (i.e., outside of the Leased Premises).

ARTICLE 6

USES

6.1 **Permitted Uses**. Lessee shall use the Premises for the purposes set forth in **Sections 1.2, 1.3 and 1.5** (subject to approval of the Department, as appropriate).

6.2 **Prohibited Uses**. Lessee shall not use or occupy the Premises (or any part thereof) in violation of law.

ARTICLE 7

INSURANCE AND INDEMNIFICATION

7.1 **General Provision**. Lessee, at its sole cost and expense, shall keep the Leased Premises insured during the Term of this Lease for the mutual benefit of Lessor and Lessee as named insureds, against the losses, on the terms and in such amounts as are set forth herein. In addition, during the Permitting and Design Phase and during the Construction Phase, Lessee shall maintain the additional coverages set forth below. Further, the Lessee shall furnish to the County Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below.

(a) The insurance coverage required shall include those classifications, as listed in standard, liability insurance manuals, which most nearly reflect the operations of the Lessee.

(b) 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 either be rated no less than "B" as to management, and no less than Class "V" as to strength, by the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwich, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division; or the company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

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

(d) 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 Lease Agreement.

(e) The Lessee shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Term. If insurance certificates are scheduled to expire during the Term, the Lessee shall be responsible for

submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County may suspend the Lease until such time as the new or renewed certificates are received by the County in the manner prescribed in this Lease Agreement; provided, however, that such suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this Lease.

7.2 **Insurance Throughout the Term**. Throughout the Term of this Lease, Lessee shall maintain the following insurance coverage:

(a) Worker's Compensation Insurance for all employees of the Lessee pursuant to Chapter 440, Florida Statutes.

(b) Public Liability Insurance on a comprehensive basis in an amount not less than $500,000.00 combined single limit per occurrence for Bodily Injury and Property Damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

(c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Lease and the Leased Premises, in an amount not less than $500,000.00 combined single limit per occurrence for bodily injury and property damage.

(d) Marina Lessee's Legal Liability in an amount not less than $1,000,000.00. Miami Dade County must be shown as an additional insured with respect to this coverage.

(e) Excess Marina Lessee's Legal Liability in an amount not less than $12,000,000.00. Miami Dade County must be shown as an additional insured with respect to this coverage.

(f) Property Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of all real and personal property, including flood insurance. **Miami-Dade County must be shown as a named insured.**

7.3 **Insurance During the Design and Permitting and Construction Phases**. To the extent not provided pursuant to **Section 7.2**, Lessee shall maintain the following coverages:

(a) During the Design and Permitting Stage the Lessee shall maintain Professional Liability Insurance in the name of the Lessee or the licensed design professional employed by the Lessee in an amount of not less than $1,000,000.00.

(b) During the Construction Phase the Lessee shall provide proof of insurances indicating the following types of insurance coverage upon the commencement of construction:

(i) Worker's Compensation Insurance for all employees of the Lessee pursuant to Chapter 440, Florida Statutes;

(ii) Public Liability Insurance on a comprehensive basis in an amount not less than $500,000.00 combined single limit per occurrence for Bodily injury and Property Damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**

(iii) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Lease Agreement, in an amount not less than $500,000.00 combined single limit per occurrence for bodily injury and property damage.

7.4 **County's Property Insurance**~~:~~. Any insurance the County may maintain shall not cover Lessee's improvements and betterments, contents, or other property of Lessee. Lessee shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Facility which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Facility is located or the property therein over the rate which would otherwise then be in effect (unless Lessee pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Lessee, the rate of property insurance on the Facility or Park or equipment or other property of the County shall be higher than it otherwise would be, Lessee shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Lessee, which sum shall be deemed additional rent

for purposes of collection only. The County acknowledges that portions of the Facility will be operated as a boat storage facility and a fuel dock, which will include the presence of heavy machinery, flammable materials, and other dangerous items customary to such use and that such use does not and will not violate the County's insurance policies. Notwithstanding anything to the contrary in this Section, Lessee shall not be responsible for any increase in the County insurance rates resulting from Lessee's use of portions of the Facility as a boat storage facility and a fuel dock.

7.5 **Other Insurance**. Lessee may procure and maintain any policy of insurance not required by this Lease.

7.6 **Indemnification**. Lessee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners principals or subcontractors. Lessee shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 8

DAMAGE OR DESTRUCTION

8.1 **Obligation to Restore**. If during the term of this Lease the Improvements shall be damaged or destroyed by fire or any other casualty, so long as insurance proceeds are made available to Lessee as provided for herein, Lessee shall repair or restore the same to a state equal to or better than the condition of such Improvements immediately prior to the casualty.

(a) Such repair, restoration or replacement shall be commenced as soon as reasonably practicable after the date on which Lessee is notified of the amount of insurance proceeds resulting from such casualty and shall be performed in accordance with **Article III** diligently and continuously thereafter to conclusion.

(b) Provided, however, and anything contained herein to the contrary notwithstanding, in the event the Improvements are substantially destroyed or so damaged that they will remain unusable for more than one hundred eighty (180) days, (i) the Lessee shall be under no obligation to repair and reconstruct the damaged Improvements (although Lessee may elect to undertake such repairs), (ii) unless Less has elected to make such repairs, (A) adjustment of the Rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and (B) the portion of the Lease which pertains to such destroyed Improvements 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 by the Lessee accordingly. In the event that the Lessee decides not to reconstruct the premises, then the Lessee shall utilize the insurance proceeds to restore the site to a clean, neat and usable condition and (subject to the provisions of any agreement with respect to a Leasehold Mortgage) shall remit to the County the balance of any insurance proceeds that remain.

8.2 **No Abatement of Guaranteed Rent**. No destruction of or damage to the Improvements or personal property on or within the Premises by fire or other casualty, whether such damage or destruction be partial or total, shall relieve Lessee from its obligation to pay in full the Guaranteed Rent and other sums and charges payable by Lessee hereunder, except as provided for in **Section 8.1**.

8.3 **Insurance Proceeds**. The proceeds of any insurance maintained under **Article VII** hereof shall be made available to Lessee for payment of costs and expense of repair, as required by this **Article VIII** (subject to the provisions of any agreement with respect to a Leasehold Mortgage). In the event that insurance proceeds, if any, are insufficient to cover the entire cost of repair, Lessee shall pay the amount required to complete said repair.

ARTICLE 9

EMINENT DOMAIN

9.1 **Definition of Terms**. The term "**Taking**" as used in this Article means a Taking during the term hereof of all or any part of the Premises or any leasehold or other interest therein or right accruing thereto as a result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain. The term "**Total Taking**" as used in this Article means the Taking of the entire Premises. The term "**Partial Taking**" means the Taking of a portion only of the Premises which does not constitute a Total Taking as above defined.

9.2 **Total Taking**. If during the Term of this Lease there shall be a Total Taking, then the leasehold estate of Lessee in and to the Premises shall cease and terminate as of the date that actual physical possession thereof shall be taken.

9.3 **Partial Taking**. If during the Term of this Lease there shall be a Partial Taking of the Premises, this Lease shall terminate as to the portion of the Premises taken on the date on which actual possession of such portion of the Premises is taken, but this Lease shall continue in full force and effect as to the remainder of the Premises, and the Rent payable by Lessee for the balance of the Term of this Lease after a Partial Taking shall be equitably abated.

9.4 **Allocation of Award or Payment**. All compensation and damages awarded or given for a Total Taking or a Partial Taking shall be allocated to Lessor and Lessee according to their interests; provided, however, that in the event that (i) this Lease terminates in whole or in part prior to the originally contemplated termination date as a result of a condemnation; and (ii) if the Lessee is not in default under the terms of this Lease as of the date of such early termination; Lessee will receive either directly from the condemnor or from the Lessor (if Lessor has received compensation for same) a sum equal to amount paid for the Improvements constructed by Lessee, multiplied by a fraction, the numerator of which will be the remaining months under the Extension Term from the date of early termination and the denominator of which will be the total number of months of the originally contemplated Extension Term.

9.5 **Effect of Termination**. If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this **Article 9**, all Rent and other charges payable by Lessee to Lessor hereunder and attributable to the property taken shall be paid up to the date upon which actual

possession shall be taken by the condemnor, and the Parties shall thereupon be released from all further liability in relation thereto (but in the event of a Partial Taking, only as to the portion of the Premises so taken).

ARTICLE 10

LEASEHOLD MORTGAGE

10.1 **Leasehold Mortgage**. Lessee shall be permitted to encumber its interest in the Lease (such encumbrance being defined as a "**Leasehold Mortgage**") in order to finance the construction of the Capital Improvements, to finance other Improvements, and to refinance any Leasehold Mortgage, subject to the following terms and conditions. The Parties will enter in to such customary documentation as may reasonably be required in connection with such leasehold financing to memorialize (i) that the Leasehold Mortgage is subordinate and inferior to the County's ownership of the Facilities, (ii) that the leasehold lender will attorn to the County in the event of any default by Lessee under the Leasehold Mortgage, (iii) that Lessor will provide the leasehold lender with reasonable notice of any default by Lessee hereunder, and reasonable opportunity to cure same, and (iv) so long as the leasehold lender does timely cure any default of Lessee hereunder (and so long as leasehold lender thereafter otherwise complies with Lessee's obligations under this Lease), following leasehold lender's foreclosure of the Leasehold Mortgage (or taking of possession pursuant to it prior to foreclosure), Lessor will recognize leasehold lender as Lessee and will not disturb leasehold lender's possession of the Leased Premises.

ARTICLE 11

ASSIGNMENTS AND SUBLEASES

11.1 **Restrictions on Assignment and Subletting**. Lessee may sublet portions of the Leased Premises such as the bait and tackle shop, and any restaurant or retail areas of the Leased Premises. However, Lessee shall neither assign the Lease nor sublet the Leased Premises (or any portion thereof) without the prior written consent of the Department, in its discretion.

11.2 **Change of Control 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 49% of the ownership of the Lessee has not been specifically approved by the Department

(provided, however, that transfers of ownership of Lessee in connection with estate planning and/or the administration of the estate(s) of the current owner(s) of the Lessee shall not be deemed to be transfers of ownership). The Department may reject any proposed new owner for any reason it believes is in the best interests of the public. Lessee agrees to provide to the Department an accurate list of all owners of the Lessee, showing the percentage of ownership of each owner, within five (5) business days of receipt of written request for same from the County. 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.

11.3 **Impact on Obligations**. In no event shall any sublease of Lessee's interest in this Lease affect any of the covenants of Lessee set forth herein or relieve Lessee of any of the obligations imposed upon it under this Lease. In no event shall any assignment of Lessee's interest in this Lease affect any of the covenants of Lessee set forth herein or relieve Lessee of any of the obligations imposed upon it under this Lease through the date of assignment (so long as such assignment has been approved by Lessor in accordance with this Article). In the event of an assignment which has been approved by Lessor in accordance with this Article, Lessee shall be relieved of any further obligations on its part arising from and after the date of such transfer.

11.4 **Foreclosure of Leasehold Mortgage**. Anything contained herein to the contrary notwithstanding, Lessor consents to an assignment or transfer of the Lease either by virtue of foreclosure of the Leasehold Mortgage or assignment in lieu of foreclosure of the Leasehold Mortgage, whether to the leasehold mortgagee or its designee, and to any direct assignee of such leasehold mortgagee or its designee, so long as the then holder of the leasehold estate has (directly or via an entity engaged by it for such purpose) appropriate marina management experience.

ARTICLE 12

SOVEREIGN RIGHTS:

12.1 **The County as Government Entity**. It is expressly understood that notwithstanding any provisions of this Agreement and the County's status hereunder:

(a) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Park or the Project or the operation thereof, or be liable for the same.

(b) The County shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Park or the Project.

(c) Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Building Department, DERM, or any other County, Federal or State Department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

~~(d) In the event that the County breaches its obligations to Lessee, and if as a result the County terminates this Lease pursuant to **Section 13.1(c) and 13.2**, such will not (anything contained herein to the contrary notwithstanding) be considered to be an event of default by Lessee, and the County shall be liable for all damages sustained by Lessee; subject to the following: The Parties acknowledge that the development of the additional Facilities is subject to contingencies outside of the control of the Parties as are particularly identified in this Agreement. Accordingly, Lessee waives any claim for lost profit damages related to the use or operation of the additional Facilities until Lessee has obtained a CO/CU for the Boat Barn, and thereafter only if supported by law.~~

ARTICLE 13

DEFAULT AND REMEDIES

13.1 **Defaults by Lessee**. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

(a) Any failure by Lessee to pay the Rent or to make any other payment required to be made by Lessee hereunder when due and within fourteen (14) days after receipt of written notice from Lessor (a "**Payment Default Notice**") of such failure (a "**Payment Default**").

(b) Failure by Lessee to remedy any condition within the Leased Premises posing a threat to the health or safety of the public or of Lessee's patrons within fourteen (14) days after receipt of written notice from Lessor of such condition.

(c) Failure by Lessee to(i) obtain Permits for the Boat Barn on or before April 30, 2015 (provided, however, that in the event of force majeure which delays the issuance of such Permits beyond such date, Lessee shall have a reasonable time to obtain such Permits, but in no event beyond April 30, 2016), and/or (ii) to complete the Construction Phase of the Project on or before April 30, 2016 (provided, however, that in the event of force majeure which delays the completion of the Construction Phase beyond such date, Lessee shall have a reasonable time to complete the Construction Phase, but in no event beyond April 30, 2017). For purposes of this Lease, the term "force majeure" shall mean any cause which is not within the reasonable control of a Party including, but not limited to, acts of God or the public enemy, moratoriums, fire or other casualty, explosions, riots, strikes, shortages of labor or materials, or war.

(d) Failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee; provided however, that if the nature of such default is such that the same cannot reasonably be cured within such period, Lessee shall not be deemed to be in default if Lessee shall, within such period, commence such cure and thereafter diligently prosecutes the same to completion.

(e) The making by Lessee of any assignment for the benefit of creditors, the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or, if a petition for

reorganization or arrangement under any law relating to bankruptcy or insolvency (unless in the case of a petition filed against Lessee the same is dismissed within 90 days) (in any such case, an "**Insolvency Default**").

(f) Lessee's abandonment or surrender of the Leased Premises or discontinuation of all operations thereon without prior written approval of the County (an "**Abandonment Default**").

(g) Unapproved change of ownership interest in Lessee and/or failure to submit the ownership list within five (5) business days upon the request of the County (a "**Change of Control Default**").

(h) The failure of Lessee to cease any activity which materially limits the County's use of the portions of the Park other than the Leased Premises, where such failure continues for fourteen (14) days after written notice thereof by Lessor to Lessee.

(i) The institution by Lessee of litigation against Lessor which is determined by a court of competent jurisdiction to have been groundless, which is either affirmed on appeal or with appeal not having been filed within the applicable time frame.

13.2 **Lessor's Remedies**. As the remedy for any default by Lessee as set forth in **Section 13.1** which shall exist and continue uncured following applicable notice of default, Lessor may terminate this Lease by providing Lessee with at least fourteen (14) days notice by certified or registered mail; provided, however, that in the event of a default consisting of either (i) an Insolvency Default, (ii) an Abandonment Default, or (iii) a Change of Control Default, Lessor may terminate the Lease immediately upon written notice to Lessee certified or registered mail (any such notice being defined as a "**Termination Notice**").

(a) Promptly after Termination Notice, Lessee shall surrender and vacate the Leased Premises and follow any reasonable instructions of Lessor given with respect to the Improvements, and Lessor may reenter and take possession of the Leased Premises and all remaining Improvements and eject all parties in possession or eject some and not others or eject none.

(b) Termination of the Lease pursuant to this Article shall not relieve Lessee from the payment of any sum then due to Lessor under the Lease, through the date of termination, and Lessee shall expressly remain liable for same.

(c) Following termination of the Lease pursuant to this Article, if Lessee does not remove its personal property from the Leased Premises within sixty (60) days of such termination, Lessor may at Lessor's election use Lessee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage.

13.3 **Lessor's Right to Perform Lessee's Covenants**.

(a) If Lessee shall at any time fail to pay any Imposition, charge or expense in accordance with **Article 4** hereof, within the time permitted, or to pay or maintain any of the insurance policies provided for in **Article 7** hereof, within the time therein permitted, then Lessor, after 15 days' written notice to Lessee, may (but shall not be required to) pay such charges or make such other payment on Lessee's part to be made. Any such performance shall not release Lessee from any of its obligations hereunder, or be construed as a waiver of such obligations.

(b) If Lessee fails to perform any obligation under **Section 5.1** after receipt of applicable notice, then, in addition to pursuing any other remedy under this Lease, Lessor may perform upon the Premises and Improvements any required act of maintenance or repair. Lessee shall pay to Lessor the cost of such maintenance and repair upon receipt from Lessor of a statement as to such cost.

13.4 In the event that the County breaches its obligations to Lessee, and if as a result the County terminates this Lease pursuant to **Section 13.1(c) and 13.2**, such will not (anything contained herein to the contrary notwithstanding) be considered to be an event of default by Lessee, and the County shall be liable for all damages sustained by Lessee; subject to the following: The Parties acknowledge that the development of the additional Facilities is subject to contingencies outside of the control of the Parties as are particularly identified in this Agreement. Accordingly, Lessee waives any claim for lost profit damages related to the use or operation of the additional Facilities until Lessee has obtained a CO/CU for the Boat Barn, and thereafter only if supported by law.

ARTICLE 14

MISCELLANEOUS

14.1 **Notices**. Notices, statements and other communications required or permitted to be given under this Lease shall be in writing and delivered by messenger, overnight courier service or sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

TO LESSOR:

Director
Miami-Dade County
Park and Recreation Department
275 N.W. 2nd Avenue
Miami, Florida 33128

With a copy to:

Miami-Dade County Attorney
111 NW 1st Street
28th Floor
Miami, FL 33128

TO LESSEE:

Westrec Equities, Inc.
16633 Ventura Blvd., 6th Floor
Encino, CA 91436
Attention: Michael M. Sachs, President

With a copy to:

Jon Chassen, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
[until November 1, 2010]
200 South Biscayne Boulevard, 25th Floor
Miami, Florida 33131
[after November 1, 2010]
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131

or at such other address as from time to time may be designated in writing by the Party receiving the notice. Any such notice which is properly mailed shall be deemed to have been served as of the date of delivery, delivery to overnight courier service or posting (as appropriate) for purposes of establishing that the sending party complied with any applicable time limitations set forth herein, but shall not be binding on the addressee until actually received; provided, however, that if attempted delivery of any such notice by the method above stated 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.

14.2 **Reports and Records**.

(a) The Lessee shall maintain during the term of this 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 reasonable approval of the Department prior to commencement of operations. Subsequent recommendations for changes, additions or deletions shall be contingent upon reasonable written approval of the Department.

(b) On or before the twentieth (20th) 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.

(c) Lessee shall submit to the Department at its own expense, within sixty (60) days following each Lease Year 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. Reporting periods may be adjusted with prior written approval of the Department.

(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 upon reasonable notice. Said inspection shall be reasonable and performed at the sole discretion of the

Department. Records for the then current Lease Year 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 Miami-Dade County, Florida, for a period of five (5) years after the end of any Lease Year.

14.3 **Quiet Enjoyment of Leased Premises**. 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.

14.4 **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 caused by the negligence of the County, its agents and employees.

14.5 **Ingress, Egress and Parking**. Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Facility, Lessee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials, shall have an easement and right of ingress and egress to and from the Leased Premises, and for parking within the Park. Further, Lessee's storage customers shall have the right to access and park within the Park at no charge by the County. Lessee and the Department shall cooperate with each other to establish a mechanism for identifying those storage customers who shall be exempt from payment of fees or charges to park within the Park.

14.6 **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 (subject to the provisions of any agreement with respect to a Leasehold Mortgage):

(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.

(d) Damage or destruction of all or any part of the Improvements which in Lessee's reasonable opinion renders Lessee's operations unsustainable, and which cannot be repaired from available insurance proceeds within a reasonable time.

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

(a) 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 bona fide causes allowed by law.

(b) 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 bona fide causes allowed by law.

(c) 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.

(d) In the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Lease granted hereunder and reenter and repossess said Facilities thereon and hold the same as if said lease 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.

(e) 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.

14.8 **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 Article 7 of the Charter of Miami-Dade County and Chapter 26 of the Miami-Dade County Code ("**Park and Recreation Rules and Regulations**") 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.

14.9 **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 agents 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.

14.10 **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.

14.11 **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 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 reasonable 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 Rent payable hereunder, for the period of such interruption, shall be made.

14.12 **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 or delayed.

14.13 **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.

14.14 **Interpretations; Amendment; Applicable Law**. 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 supersedes 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. Lessor and Lessee agree

that they have each participated in the preparation of this Lease and no ambiguity herein (if there is one) shall be construed against one Party over the other.

14.15 **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 with respect to security outside of the Leased Premises, but otherwise within the Park). Absence of said Lessee security measures shall not increase the County's or the Department's security obligation.

14.16 **Holding Over**. If Lessee remains in possession of the Facility after the expiration of the term of this Lease Agreement, without a new Lease Agreement reduced to writing and duly executed and delivered (even if Lessee shall have paid, and County shall have accepted, rent in respect to such holding over), Lessee shall be deemed to be occupying the Facility only as a Lessee from month-to-month, subject to all covenants and conditions of this Lease Agreement. If Lessee fails to surrender the Facility upon the termination of this Lease Agreement, then Lessee, in addition to any liabilities to County accruing there from, shall indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Lessee on such failure.

14.17 **Inspector General Reviews**. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "**IPSIG**"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Lessee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Lessee's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Lessee, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Lessee in connection with this

Agreement. The terms of this Article shall not impose any liability on the County by the Lessee or any third party.

(a) According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of an IPSIG to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Lessee, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

(b) Upon written notice to the Lessee from the Inspector General or IPSIG retained by the Inspector General, the Lessee shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Lessee's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume

discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

14.18 **Impact of Waiver**. Waiver of any breach shall not constitute waiver of any other breach.

14.19 **Partial Invalidation**. Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement. If any portion of this Lease shall be declared invalid by order, decree or judgment of a court, this Lease shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on Lessor or Lessee, or constitute a substantial deviation from the general intent and purpose of said Parties as reflected in this Lease.

14.20 **Successors and Assigns**. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

14.21 **Recording**. Upon the request of either Party, the other Party will execute, for purposes of recordation in the Official Records of Miami-Dade County, a memorandum or short form of this Lease containing the names of the Parties, a description of the Leased Premises, and such other provisions as either Party may reasonably require. The cost and expenses of recording the memorandum of the Lease shall be borne by Lessee. Each Party agrees that it will not record this Lease in its entirety unless such a recording is required to protect the rights of Lessor or Lessee hereunder or unless required by a Leasehold Mortgagee.

IN WITNESS WHEREOF, Lessor and Lessee have caused their appropriate officials to execute this Lease as of the Effective Date.

LESSOR

ATTEST: Harvey Ruvin
Clerk of the Board

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

By: _____
Deputy Clerk

By: _____
Carlos Alvarez

LESSEE

WITNESSES:

WESTREC EQUITIES, INC.

Witness Signature

Name: Jeffrey K. Ellis
Title: Vice President

Witness Printed Name

(seal)

Date: 5/25/10

Witness Signature

Witness Printed Name

EXHIBIT A

MIAMI-DADE COUNTY

PARK AND RECREATION DEPARTMENT
HAULOVER PARK - CURRENT LEASE AREA INCLUDING CONSTRUCTION

MIAMI-DADE COUNTY

PARK AND RECREATION DEPARTMENT
HAULOVER PARK - CURRENT LEASE AREA INCLUDING CONSTRUCTION

EXHIBIT A-1

EXHIBIT A-2

MIAMI-DADE COUNTY

PARK AND RECREATION DEPARTMENT
HAULOVER PARK - CURRENT LEASE AREA INCLUDING CONSTRUCTION

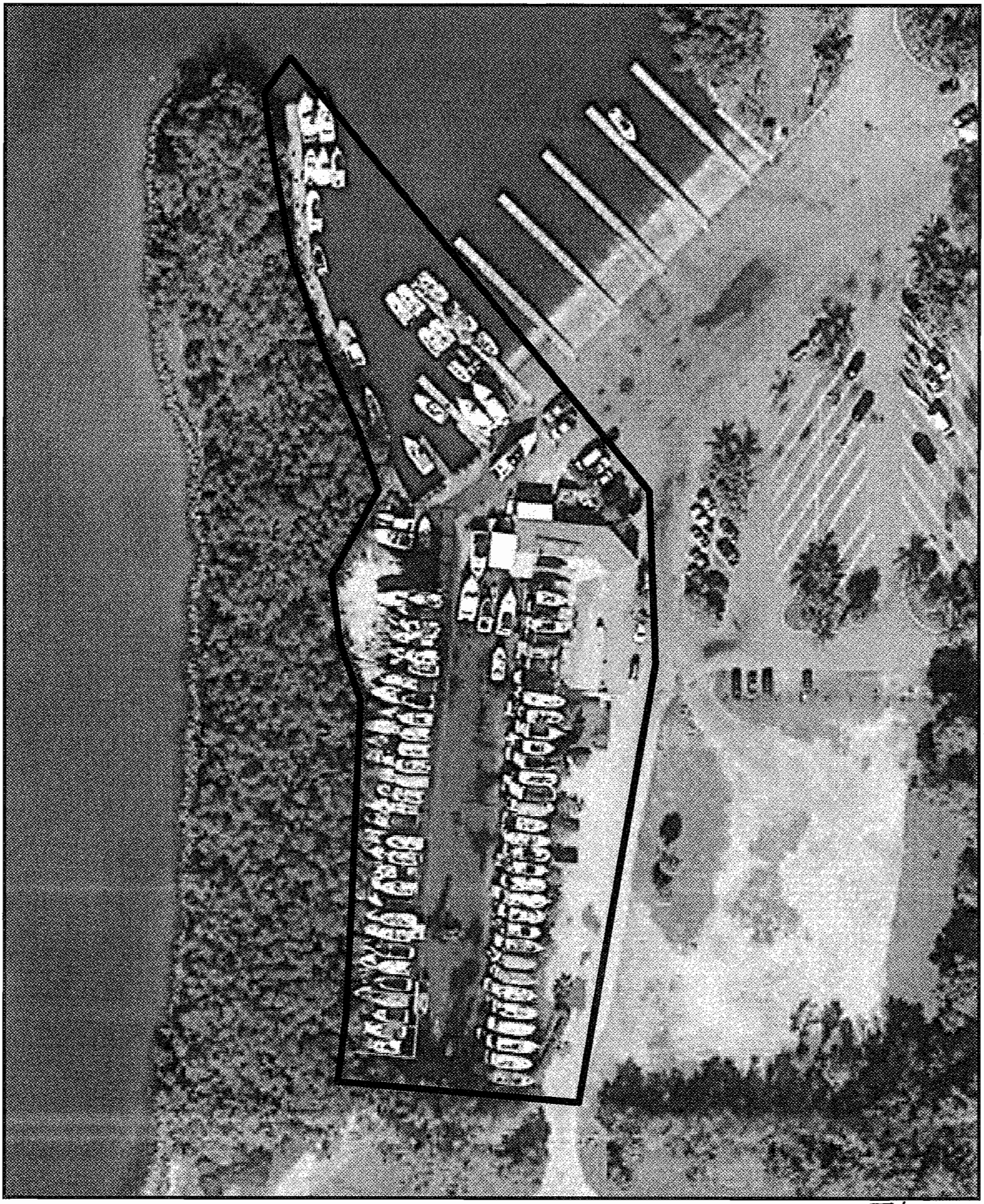

EXHIBIT A-3

MIAMI-DADE COUNTY

PARK AND RECREATION DEPARTMENT
HAULOVER PARK - CURRENT LEASE AREA INCLUDING CONSTRUCTION

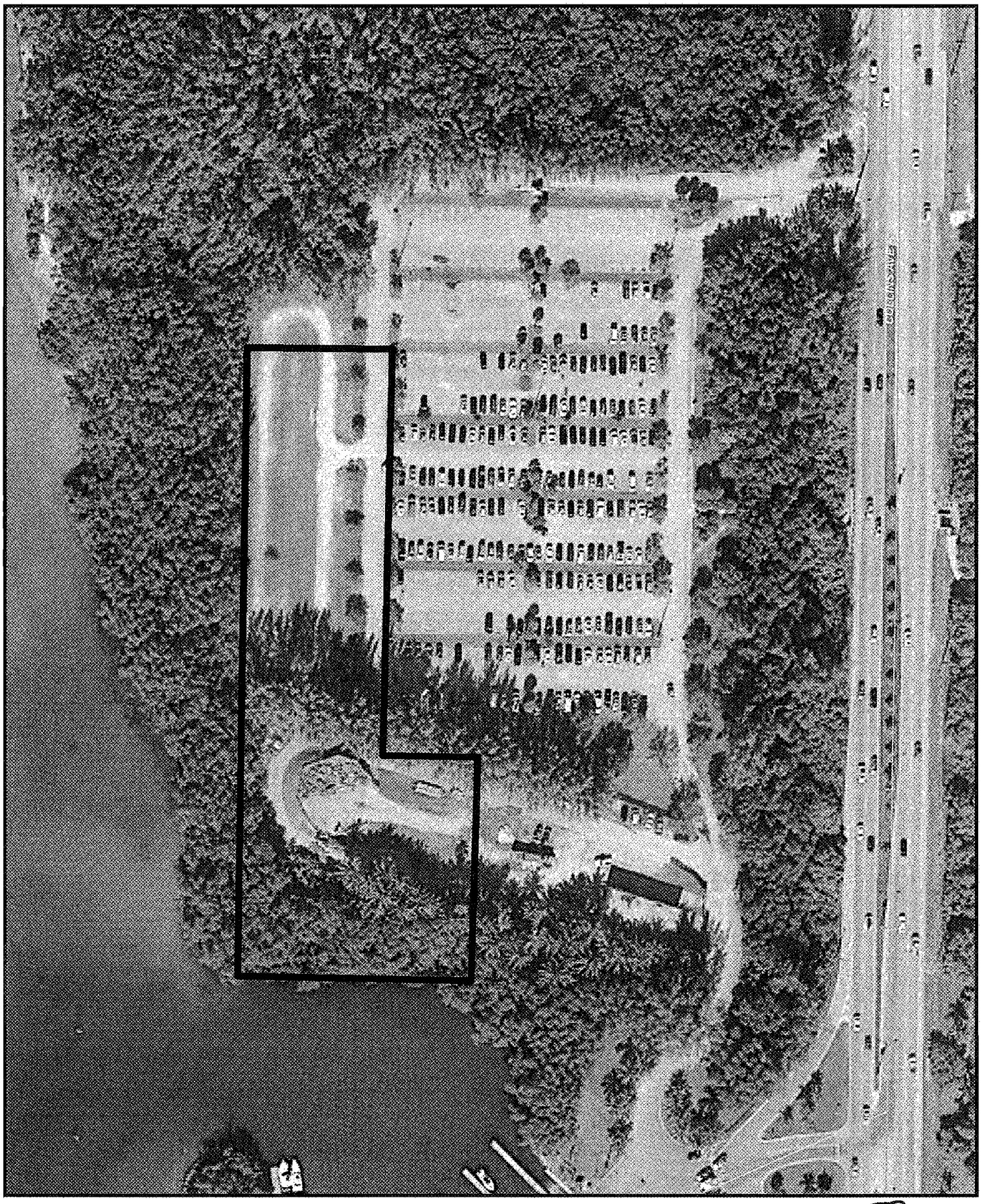

EXHIBIT "B"

CONSTRUCTION RIDER

Premises: Facilities located within Haulover Marina

Project: New Dry Rack Storage and other Improvements

This Construction Rider is attached as **Exhibit "B"** to and hereby made a part of that certain Amended and Restated Lease Agreement (the "**Agreement**") between the County and the Lessee, covering certain Facilities located within Haulover Beach Park a/k/a Bill Bird Marina (the "**Park**" or the "**Marina**"). Words and phrases used in this Construction Rider shall have the same meaning as set forth in the Agreement unless specifically provided otherwise herein. If there is any conflict between the provisions, terms and/or conditions of this Construction Rider and the provisions, terms and/or conditions of the Agreement, the terms and conditions of the Agreement will prevail.

I. CONSTRUCTION OF THE CAPITAL IMPROVEMENTS

For the purposes of this Construction Rider, the term "**Construction**" shall mean the structure or public utility or any other installation or physical change made to the Marina to increase its value and utility or to improve its appearance. The Capital Improvements the Lessee constructs at the Marina shall be constructed in accordance with the provisions of the Agreement and this Construction rider, and Lessee shall spend an amount not less than eleven million four hundred thousand dollars ($11,400,000.00) for the Capital Improvements, of which no less than ten million dollars ($10,000,000.00) shall be utilized towards hard construction costs (i.e., bricks and mortar).

A. Conceptual Plans. Within ninety (90) days following the Effective Date of the Agreement, Lessee shall commence preparation of conceptual plans for the Capital Improvements (the "**Conceptual Plans**"), which shall as soon thereafter as reasonably practicable be provided by Lessee to County's Parks and Recreation Department (the "**Department**"). The Department shall have 60 days from its receipt of the Conceptual Plans to review the Conceptual Plans and to solicit input from other government agencies and to provide feedback to Lessee (the "**Feedback**") regarding the general aesthetics, layout, traffic and pedestrian flow, site orientation and design of the proposed Capital Improvements. Lessee shall revise the Conceptual Plans following receipt of the Feedback and submit same to the Department for its review and comment. This process shall continue until such time as the Department has approved the Conceptual Plans. After the Department has approved the Conceptual Plans, Lessee shall institute the process of obtaining approval of the Conceptual Plans by all other Governmental Entities having jurisdiction over the Project (although nothing herein shall prohibit Lessee from seeking such approval concurrently with submissions to the Department). As necessary, Lessee will provide revised Conceptual Plans to the Department reflecting revisions required by such other Governmental Entities for the Department's review and approval.

B. Sustainable Buildings Program. The Lessee shall cooperate and shall cause its contractors and consultants to cooperate with the County's Sustainability Manager in order to incorporate green building practices into the planning and design of the Capital Improvements pursuant to County Ordinance Number 07-65 concerning the County's Sustainable Buildings Program.

The Lessee shall, in each of its contracts and subcontracts, include a provision that the contractor, subcontractor and/or sub consultant:

1. shall comply with all requirements of the County's Sustainable Building Program;

2. will maintain all files, records, accounts of expenditures for Lessee's or consultant's portion of the Project;

3. and such records (or true and correct copies thereof) shall be maintained within Miami-Dade County; and County shall have access thereto as provided in the Agreement and this Construction Rider.

C. Preliminary Plans and Specifications. Within 90 days after final approval of the Conceptual Plans (i.e., after Lessee has revised such Conceptual Plans to the Department's satisfaction, including after review and approval by all other applicable Governmental Entities) Lessee, at its cost, shall commence preparation of "**Preliminary Plans**" for the Capital Improvements. When the Preliminary Plans are complete, Lessee shall deliver to the Department five (5) sets of Preliminary Plans, including one Mylar set (A CADD file may be submitted in lieu of the Mylar set) for the construction of the Capital Improvements, 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 Park, curbs, gutters, parkways, lighting, design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Capital Improvements shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Lessee to the Department and approved by the Department. Additionally, such Preliminary Plans of the Capital Improvements shall comply with the applicable provisions of Article 7 of the Miami-Dade County Home Rule Charter, as determined by the County in its sole discretion. The Capital Improvements shall be constructed within the exterior property lines of the Premises; provided that required utilities, access and conditional use requirements will not violate this provision. The Capital Improvements shall be aesthetically and functionally compatible with the setting of the Park.

Within 60 days after the Department receives Preliminary Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Lessee specific corrective comments (the "**Comments**"). The Department shall not be unreasonable in exercising its approval rights hereunder. Lessee shall exercise reasonable diligence in resolving any objections by the Department to the Preliminary Plans and thereafter to submit revised Preliminary Plans to the Department for review and comment. This process shall continue until such time as the Department has approved the Preliminary Plans.

As and to the extent necessary, after the Department has given its approval to the Preliminary Plans, Lessee shall institute the process of obtaining approval of the Preliminary Plans by all

other Governmental Entities having jurisdiction over the Project (although nothing herein shall prohibit Lessee from seeking such approval concurrently with submissions to the Department). As necessary, Lessee will provide revised Preliminary Plans to the Department reflecting revisions required by such other Governmental Entities for the Department's review and approval.

D. Final Plans. Within 90 days after the Preliminary Plans and specifications have been approved by the Department and all other applicable Governmental Entities, the Lessee, at its cost, shall commence preparation of "**Final Plans**." When the Final Plans are complete, Lessee shall deliver to the Department five (5) sets of final plans, including one Mylar set [or CADD file], and specifications and working drawings covering the Project, which Final Plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect or professional engineer licensed to practice as such in Florida. The Final Plans and all associated addenda and attachments shall be deemed incorporated to the Agreement by reference.

As and to the extent necessary, Lessee shall also institute the process of obtaining approval of the Final Plans by all other Governmental Entities having jurisdiction over the Project. As necessary, Lessee will provide revised Final Plans to the Department reflecting revisions required by such other Governmental Entities for the Department's review and approval.

E. Permits. Within 30 days after the date that Lessee receives the Department's approval and the approval of all other Governmental Entities of the Final Plans, Lessee shall commence the process of seeking from all Governmental Entities having jurisdiction over the Park and the Marina (each an "**Agency**" and collectively the "**Agencies**") all required Permits for construction of the Capital Improvements, and Lessee shall exercise diligent efforts in attempting to obtain such Permits. Lessee may make immaterial changes to the Final Plans as may be required by any Agency. To the extent that any Agency requires a material change to the Final Plans as a condition to the issuance of a Permit, Lessee shall seek the Department's approval of such material change, which approval shall not be unreasonably withheld or delayed.

The obtaining of any such Permits shall not be considered as complete until any review and/or appeal is final by the highest body authorized to determine same or until the time for appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any previously issued Permit, the obtaining of the Permits shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal there from shall have expired, or if any appeal has been taken, until the appeal has been determined with finality.

Lessee shall promptly deliver within three (3) business days to the Department copies of all Permits received by Lessee for the Capital Improvements.

F. Commencement and Completion of Construction of the Project. Within 30 days from the date that the Department receives copies of all required Permits and authorizations regarding construction of the Capital Improvements (or any portion thereof) and notice from Lessee that it is prepared to proceed with construction of such Capital Improvements (the "**Notice of Intent to Commence**"), the Department shall deliver a "**Notice to Proceed with Construction**" and shall turn over possession of all portions of the Premises not then in possession of Lessee to Lessee, and Lessee shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Project shall be in accordance with the Final Plans.

The Final Plans shall not be materially changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any Agency which issues Permits and whose approval of modifications may be required.

1. All work in connection with the construction of the Project shall be performed substantially in conformity with the Final Plans and shall comply with all applicable governmental Permits, authorizations and laws. Lessee will permit unobstructed inspection by the Department's staff to determine compliance with the approved Final Plans and specifications throughout construction.

2. Neither the Lessee nor its contractors and/or sub consultants shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his/her 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 between the Lessee and its contractors and consultants shall include the above non-discrimination provisions.

3. Lessee agrees that construction of the Project shall be completed within time frame set forth in the Agreement.

4. Upon completion of construction of the Project, Lessee shall, at its cost, obtain a survey of the applicable portions of the Marina and deliver to the Department "as built" drawings, including copies all of CADD drawing, accurately reflecting the Project at the Park.

G. <u>Provisions Applicable during Construction of Project</u>. In addition to the other provisions of the Agreement, the following provisions shall be applicable during the period of time that Lessee constructs the Project:

1. Lessee shall provide the Department with Lessee's Notice of Intent to Commence construction and the Department shall have thirty (30) days to deliver of the Notice to Proceed with Construction.

2. All construction shall be performed by appropriately licensed contractors and subcontractors, reasonably approved by the Department. Lessee shall furnish the Department with a true copy of Lessee's contract (the "**Construction Contract**") with the general-contractor (the "**General Contractor**") showing a breakdown of costs. Such Construction Contract shall give the County the right, but not the obligation, to assume the Lessee's obligations and rights under that Construction Contract between Lessee and General Contractor, if the Lessee should default thereunder (subject, however, to the provisions of any agreement executed in connection with a Leasehold Mortgage).

3. During the construction of the Capital Improvements, the Department or its designee shall periodically inspect the construction to ensure conformity with the approved Final Plans, and any changes thereto requested by the Lessee and approved by the Department in writing.

4. During the construction of the Capital Improvements, a Project Manager (the "**PM**") for the Department will be assigned and shall be responsible to attend weekly/monthly construction meetings and periodically inspect and review the progress of construction to ensure adequate performance and conformity with the approved plans. Any changes to the approved plans requested by the Lessee must be in writing and approved by the Department prior to implementation. The Lessee shall at its sole cost remit to the County, a fee for the PM that shall not exceed on half of one percent (.05%) of construction costs.

H. Construction Bonds. At least ten (10) days prior to commencement of any construction work on the Premises, or prior to the purchase and delivery to the Premises of any materials, equipment or supplies for construction, the Lessee shall deliver to the County and record in the public records of Miami-Dade County, Florida, a payment and performance bond (the "**Bond**") with a surety insurer authorized to do business in the State of Florida as a surety in the full amount of the construction cost of the Improvements that complies with the requirements of Section 255.05, Florida Statutes. Such Bond shall be in the form provided and attached hereto as part of the Construction Rider, and shall name the Lessee as the principal and the County as the obligee, and payee and shall meet the following specifications (which shall apply to bid, performance, payment, maintenance, and all other types of bonds):

1. All Bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	**Best's Rating**
$500,001 to $1,500,000	B V
$1,500,001 to $2,500,000	A VI
$2,500,001 to $5,000,000	A VII
$5,000,001 to $10,000,000	A VIII
Over $10,000,000	A IX

On-bonds in the amount of $500,000 or less, the provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

A. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,

B. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

C. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

2. Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "**Surety Companies Acceptable on Federal Bonds**", published annually. The Bond amount shall not exceed the underwriting limitations as shown in this circular.

3. The attorney-in-fact or other officer who signs a contract Bond for a surety company must file with such Bond a certified copy of his power of attorney authorizing him to do so. The contract Bond must be countersigned by the surety's resident Florida Agent.

4. The Lessee may in lieu of a surety Bond, submit a cash bond, conditioned upon the faithful performance of the work in strict accordance with the Construction Contract and with the approved plans and specifications and the completion of the same free from all liens and within the time limit herein specified; the said bond shall be so worded as to make the Construction Contract a part thereof and shall contain a clause providing the right of suit or action for whose benefit said bond shall be executed as disclosed by the text of said Bond and Construction Contract to the same extent as if he or they were the obligee or obligees therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

5. Florida Statutes Section 255.05 provides for the following conditions to be made in all Performance and Payment Bonds relating to public projects:

"A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection."

"A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment."

"No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies."

6. The Bond shall provide the following, without limitation:

A. That a payment bond in an amount not less than the cost of construction of the Project is obtained that is conditioned to secure the completion of the Project free from all liens and claims of Lessees, sub Lessees, contractors, sub contractors, mechanics, laborers and material men in substantially the form attached hereto;

B. That a performance bond in an amount not less than the cost of construction of the Project is obtained that insures that the construction work shall be effected by the Lessee or, on its default, the surety in substantially the form attached hereto; and,

C. That the surety will defend and indemnify Miami-Dade County and Lessee against all loss, cost, damage, expense and liability arising out of or connected with the construction of the Project, up to the maximum bond requirement amount.

7. In the event that, for any reason, either or both of the Lessee's Payment and Performance Bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by material men, laborers, contractors, sub contractors, or any suppliers of any kind, the Lessee shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.

I. Insurance. Prior to the commencement of construction, Lessee shall provide or cause its contractors to provide an original policy for Builders Risk/Installation Floater on an "All Risk" basis in an amount not less than one hundred percent (100%) of the insurable value of the building(s) or structure(s) or material(s). The policy shall be in the name of Miami-Dade County and the Lessee as their interests may appear. This insurance is to be maintained until substantial completion of the work, as determined by the Department.

(This insurance is in addition to the insurance required by the Amendment).

J. Miscellaneous.

1. No liens shall be attached to the Park or any part thereof.

2. Prior to the commencement of any work, Lessee shall demonstrate to the Department's satisfaction that all construction financing is in place.

3. Lessee shall work closely with the Department in scheduling and engaging in Lessee's construction activity so as not to disrupt Park events, including but not limited to special events. Where conflict may occur, the Department shall reasonably make the determination as to Lessee's right to continue work and the desirability of temporarily halting or continuing activity by Lessee.

4. Lessee shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Lessee's failure to cease work after written notice from the Department pursuant to **paragraph J(3)** above.

K. Art in Public Places. The Lessee shall, prior to preparing the Final Plans and specifications, through the Department initiate contact and confer with the Art in Public Places Representative for review of applicability of an art component to the Project. Should Art in Public Places determine that the installation of an art component is applicable to this Project based on the provisions of Ordinance No. 73-77 and subsequent amendments and guidelines, and should it decide to pursue said installation, the Lessee shall further confer with the Arts in Public Places Representative to develop a concept for art appropriate to the Project, and the Art in Public Places Professional Advisory Committee as to the type(s) of art, location(s) and possible artist(s). The Director of the Arts in Public Places program shall approve the final concept and location. The Art in Public Places Trust will make the final choice of the artist(s), upon recommendation of the Art in Public Places Professional Advisory Committee. As part of its Master Plan, Art in Public Places encourages and will give preference to collaborative projects between artist(s) and the Lessee to promote the integration of artwork and site. Such collaborative efforts shall include the active involvement of both the Lessee and the artist(s) during design development of the Project. The Lessee shall coordinate the installation of anchorages, special lighting, or plumbing or other utility or installation and connections as

required for the proper installation of the artwork in accordance with the artist's concept(s) as part of their services under this Agreement.

Should the Art in Public Places fee be assessed, the Lessee shall at its sole cost expend one-and-a-half-percent (1.5%) of the cumulative construction cost for the refurbishment of existing works of art at the Restaurant and/or for the commissioning of new works of art. All aspects concerning the acquisition of new works of art or the removal and/or relocation of existing works of art located within the Restaurant shall comply with the Art in Public Places (APP) ordinance and the program Master Plan & Implementation Guidelines as are appropriate in the determination of the County. The Lessee may be requested to assign a representative to act as a liaison with APP for purposes of implementing the requirements set forth herein. The County reserves the right to make final determination on how funds appropriated herein are expended.

II. THE DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. The Department shall deliver physical possession of the Premises to Lessee in an "as is" condition so that Lessee may commence construction.

B. Reasonable Access. The Department shall provide reasonable access to allow Lessee to have utilities brought to the Premises and to have constructed the approved improvements described in this Agreement.

C. Liquidated Damages. N/A

RESOLUTION NO. R-1051-88

Attachment 1

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

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

Joaquin G. Avino

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 Elizabeth Alvarez
Deputy Clerk

SEAL: COUNTY COMMISSIONERS DADE COUNTY FLORIDA

Board of County Commissioners
Dade County, Florida

102.01-3 REV. 11/72

Agenda Item No. 5(e)(42)
7-19-88

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

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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

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

Joaquin G. Avino

RECOMMENDATION:

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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.

end

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, 1988.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 21st day of July, A. D. 1988.

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

By _____
Deputy Clerk

SEAL: COUNTY COMMISSIONERS DADE COUNTY FLORIDA

Board of County Commissioners
Dade County, Florida

102.01-3 REV. 11/72

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",)

W I T N E S S E T H:

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.

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.

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.

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.

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

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.

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

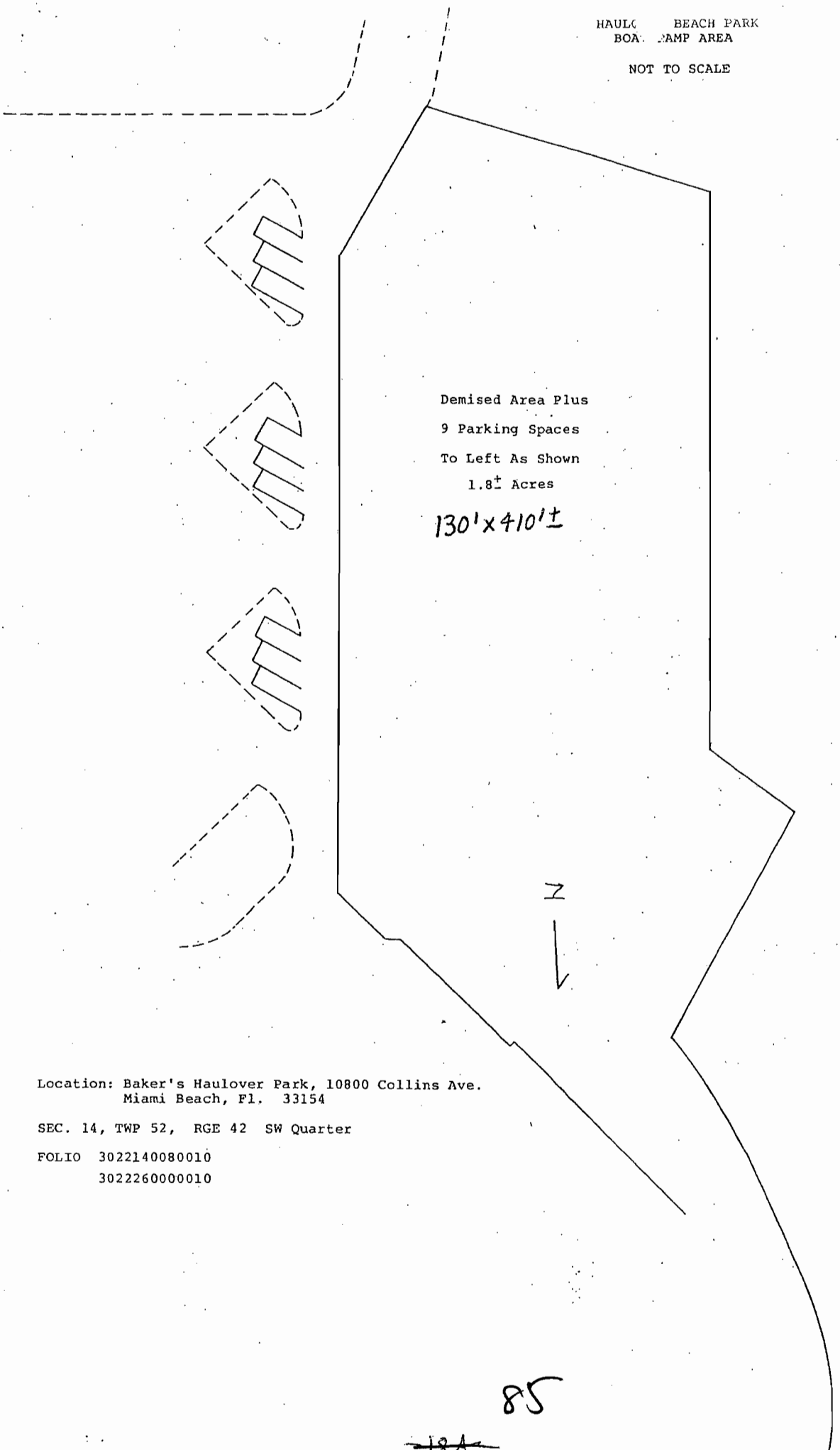
(CORP. SEAL)

ATTACHMENT "A"

PROPERTY DESCRIPTION

HAULO BEACH PARK
BOA. AMP 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.

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

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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;

(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

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

Proposed Ownership Of
Gold Coast Racks, Inc.

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

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.

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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, PENNSCOURT, 355 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

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-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

GOLD COAST RACKS, INC.

By: _____
Richard Gregory
Secretary

By: _____
Richard Gregory
President

Agenda Item No. R-5(e)(5)
9-25-90

RESOLUTION NO. R-1029-90

RESOLUTION RATIFYING THE COUNTY MANAGER'S ACTION IN EXECUTING THE AMENDMENT TO LEASE WITH HAULOVER RESORT MARINA, INC. TO INCLUDE BAIT AND TACKLE/FUEL FACILITY, SETTING PAYMENT RATE AND CONDITIONS AND ACCEPTING DONATION OF CERTAIN EQUIPMENT AND IMPROVEMENTS IN LIEU OF RENT AT HAULOVER BEACH PARK

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

WHEREAS, at the County Commission meeting of July 24, 1990, this Board, by motion, authorized the County Manager to administer County business during the period of July 25, 1990 through September 10, 1990 [Agenda Item No. 7(a)(1)]; such action(s) taken to be in accordance with the policies and procedures established by the Board of County Commissioners and be submitted to the Board for ratification at the County Commission meeting of September 25, 1990.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approves and ratifies the County Manager's action in executing an Amendment to the Lease Agreement with Haulover Resort Marina, Inc. authorizing inclusion of the bait and tackle/fuel facility, setting payment rate and conditions, and accepting donation of certain equipment and improvements at Haulover Beach Park in lieu of rent, in substantially the form attached hereto and made a

part hereof; authorizes the County Manager to execute the same for and on behalf of Dade County.

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

Barbara M. Carey	aye
Charles Dusseau	aye
Joseph M. Gersten	aye
Larry Hawkins	aye
Harvey Ruvin	aye
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 25th day of September, 1990.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

TONY COTARELO, CLERK

RAYMOND REED

By: _____
Deputy Clerk

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

OFF. REC. 17133PG3447

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, HARVEY RUVIN, 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-1029-90, adopted by the said board of County Commissioners at its meeting held on September 25 19 90.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 11th day of March, A.D. 19 96.

HARVEY RUVIN, Clerk
Board of County Commissioners
Dade County, Florida

By _____
Deputy Clerk

COUNTY COMMISSIONERS SEAL COUNTY FLORIDA

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

CLK/CT 587 3/93

R-5(e)(5)
9-25-90
R-1029-90

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA
OFF. REC. 17133 PG 3440

LEASE AMENDMENT

THIS LEASE AMENDMENT, made and entered into this 16th day of August, 1990, by and between METROPOLITAN DADE COUNTY (the "County") and HAULOVER RESORT MARINA, INC. (the "Lessee")

WITNESSETH

WHEREAS, the County and Lessee have entered into a Lease Agreement, dated July 19, 1988, and modified by Assignment and Addendum, dated July 21, 1989 (together the "Lease"); and

WHEREAS, the County and Lessee desire to amend the Lease to incorporate additional space at Haulover Beach Park; and

WHEREAS, the Lease allows such use of additional space with County approval;

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

1. Additional Space: Upon completion of construction, and submission of a legal description and sketch by the Lessee, at the site initially shown on Attachment A of this Amendment, said site shall be incorporated into the Lease and subject to the terms thereof except as modified in this Amendment.

2. Commencement Date: The County and Lessee agree that the date on which construction was substantially completed, minimum rental guarantee payments began, and the 10 year initial term of the Lease began was January 1, 1990.

3. Payments for Additional Space: All gross receipts at the additional space are subject to the percentage fees in this Lease. Percentage fees for food and beverage sales shall be:

3% of monthly gross receipts from foodservice from $0.00 to $3000.00
5% of monthly gross receipts from foodservice from $3000.01 to $5000.00
7% of monthly gross receipts from foodservice over $5000.00

In addition to existing minimum rental guarantee and percentage, the Lessee shall pay $1500.00 per month or any portion of a month as additional rent. This additional rent will not be changed for a period of 36 months, after which this additional rent shall be reviewed in accordance with the terms of the Lease.

4. No other terms of the Lease are hereby amended or modified. The Lease remains in full force and effect and is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have their duly authorized appropriate officials to execute this Amendment as of the date first written above.

The Park and Recreation Department recommends that HRM take over the Sportservice bait and tackle operation, but not the beachfront foodservice. Minor foodsevice is allowed under the HRM contract, but a large foodservice facility like the beachfront operation is beyond the scope of the HRM lease. The Department would seek a new operator at the beachfront foodservice through normal public bidding. If necessary to continue operations at the beachfront operation, the Department would seek a foodservice provider on a short term basis until a new long term contract is awarded.

HRM has agreed to the following terms; if the Sportservice bait and tackle is added to its current operation:

Minimum rent: $1,500/mo.
Percentage rent <u>in addition to</u> minimum rent:

3% of monthly gross receipts from merchandise sales
2¢ per gallon of fuel sold
3% of monthly gross receipts from foodservice sales of $0-3,000
5% of monthly gross receipts from foodservice sales of $3,001-$5,000
7% of monthly gross receipts from foodservice sales over $5,000

Based on the existing business, the percentage rent is projected to be approximately $12,000/yr. When added to the minimum, total new revenue from the bait and tackle operation would be $30,000/yr. This is greater than the current Sportservice payments. But, the Department does not have the $54,000 necessary to pay Sportservice for the onsite improvements and equipment.

HRM has agreed to pay $54,000 to Sportservice for the improvements and equipment and to donate those improvements to the County in exchange for $54,000 in rent credit. To help insure that the revenues to the Department are not overly burdened, HRM has agreed to a credit of $1,500/mo. for 36 months (36 x $1,500 = $54,000). This would reduce the annual payments to $12,000. However, revenue from contracting the beachfront foodservice should generate a net increase in payments over the current level paid by Sportservice.

The amendment to allow the above was implemented so that there would be no loss of service to the public or income to the Department and so that facilities and equipment would not become subject to theft or vandalism because they were unoccupied. This was particularly important during the summer months when this popular park is in heaviest use. Your ratification is recommended.

MEMORANDUM Agenda Item No. R-5(e)(5)

TO: Honorable Mayor and Members
Board of County Commissioners

DATE: September 25, 1990

FROM: Joaquin G. Aviñô P.E., P.L.S.
County Manager

SUBJECT: Ratification of County Manager's Action in Executing Amendment to Lease with Haulover Resort Marina, Inc. for Additional Space

REC. # 110443

Recommendation:

It is recommended that the Board ratify the County Manager's action in executing an amendment to the Lease Agreement with Haulover Resort Marina, Inc., for inclusion of an additional space (an existing bait and tackle shop and fuel facilities) for operation at Haulover Beach Park and accept donation of certain equipment and improvements in lieu of rent. The Culture and Recreation Committee reviewed and approved this transfer of operation at its February 1, 1990 meeting, as part of the approval to advertise the leasing of the beach foodservice operation.

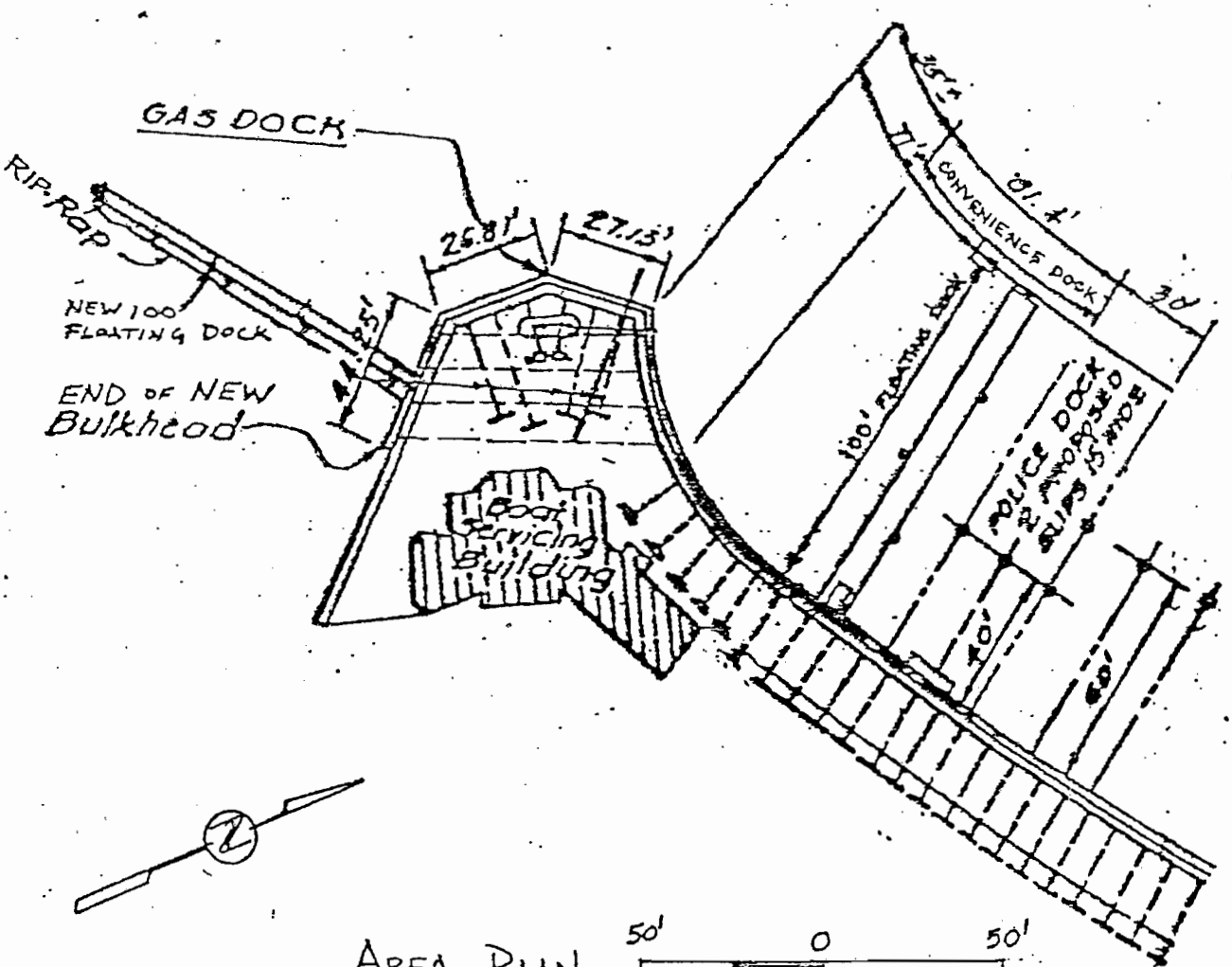
Background:

At Haulover Beach Park there are a number of concessionaires. The concessionaire who operates the beachfront foodservice facility and the main marina bait and tackle at the south end of the park is Sportservice Corporation. The concessionaire who operates the dry boat storage and a smaller bait and tackle at the north end is Haulover Resort Marina, Inc.

Sportservice wishes to delete the Haulover facilities from its multi park contract. The contract allows such deletions. (Sportservice would continue to operate at Homestead Bayfront Park, Tropical Park, Matheson Hammock Park and Crandon Park under the continuing portions of the contract.) By deleting Haulover, Sportservice would be entitled to flat fee rent reduction of $20,000 (from $200,000 a year to $180,000) and payment of $54,000 for the existing onsite improvements and equipment. The Park and Recreation has no funding for this payment and the loss of revenue would have a negative impact on park operations. An alternative to overcome these negative impacts and to provide for continuing bait and tackle service is available.

The contract with Haulover Resort Marina, Inc., ("HRM") was the best of three good bids for that project. One of the features of the bid offering was the condition that if other sites within the park became available, the Park and Recreation Department could allow the successful bidder to operate that site. However, this additional site must fit within the approved purpose of the contract and must be on acceptable terms and conditions.

OFF. REC. 17133 PG 3442



AREA PLAN.

SCALE: 1" = 50'

112

Marie D. Pat
6/2/90

OFF. REC. 17133PG3441

ATTEST: Richard P. Brinker
Clerk of the Board

By: _____
Deputy Clerk

METROPOLITAN DADE COUNTY, FLORIDA
By Its Board of County Commissioners

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

HAULOVER RESORT MARINA, INC.

By: _____
Richard Gregory
Secretary

By: _____
Richard Gregory
President

(SEAL)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

DBM
Assistant County Attorney

Agenda Item No. 5(e)(26)
10-1-91

RESOLUTION NO. R-1110-91

RESOLUTION AUTHORIZING COUNTY MANAGER TO EXECUTE THE AMENDMENT TO LEASE WITH HAULOVER RESORT MARINA, INC. TO ALLOW ACCELERATION OF CREDIT ALLOWED FOR COUNTY ACCEPTANCE IN LIEU OF RENT AT HAULOVER BEACH PARK

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 an Amendment to the Lease Agreement with Haulover Resort Marina, Inc. authorizing acceleration of the rate of credit previously allowed by the County in accepting donation of certain equipment and improvements at Haulover Beach Park in lieu of rent, in substantially the form attached hereto and made a part hereof; authorizes the County Manager to execute the same for and on behalf of Dade County and to exercise the renewal and termination provisions contained therein; and directing the Clerk of the Board to record the same in the Official Records of Dade County.

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

MEMORANDUM

Agenda Item No. 5(e)(26)

TO Honorable Mayor and Members
Board of County Commissioners

DATE October 1, 1991

SUBJECT Amendment To Lease With Haulover Resort Marina, Inc. At Haulover Beach Park

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

Recommendation:

It is recommended that the Board approve and authorize execution of an amendment to the Lease Agreement with Haulover Resort Marina, Inc. to allow the accelerated application of approved credits against payments due since September, 1990. This item was reviewed and approved by the Culture and Recreation Committee on September 13, 1991.

Background:

Following public bidding, the Board approved a Lease Agreement with Gold Coast Racks, Inc. for the construction and operation of a boat storage facility at Haulover Beach Park (Reso. No. R-1051-88, July 19, 1988). A year later, the Board authorized an assignment of this lease to Haulover Resort Marina, Inc., a corporation with the same ownership, and authorized one-time leasehold mortgaging (Reso. No. R-1393-89, November 21, 1989).

Last year, in cooperation with the Department, the lessee purchased $54,000 in equipment and improvements from another concessionaire at the Park, Sportservice Corporation. This allowed the lessee to add the bait and tackle to the existing boat storage operation. It also allowed the County to contract with a new foodservice operator for the beach area. The lessee donated the $54,000 in equipment and improvement in exchange for a rent reduction of $1500 a month for 36 months (Reso. No. R-1029-90, September 25, 1990).

Since that time, this lessee like many other businesses, has experienced financial hardships and is in arrears in its rent payments. The tenant is requesting that the $54,000 be credited at a rate faster than $1500 a month. The tenant wants the County to allow the $54,000 in total credits to be applied against the arrearages. Since the County has benefitted from the $54,000 in equipment and improvements since the time of donation, staff has no objection to this request.

If this acceleration of credits is allowed, the tenant will still have an outstanding balance of about $20,000. This balance would be paid off over the next several months. Payments are secured by a Certificate of Deposit in the amount of $48,000.

It is respectfully requested that the Board approve this amendment which will help this tenant in difficult times.

Mary Collins	aye
Charles Dusseau	aye
Joseph M. Gersten	absent
Larry Hawkins	aye
Alexander Penelas	aye
Harvey Ruvin	aye
Arthur E. Teele, Jr.	aye
Sherman S. Winn	aye
Stephen P. Clark	absent

The Mayor thereupon declared the resolution duly passed and adopted this 1st day of October, 1991.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

MARSHALL ADER, CLERK

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

By: RAYMOND REED
Deputy Clerk

10-1-9

R-1110-91

LEASE AMENDMENT

THIS LEASE AMENDMENT, made this 1ST day of October, 1991, by and between METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida, (the "County") and HAULOVER RESORT MARINA, INC., a Florida corporation, (the "Lessee"):

WITNESSETH

WHEREAS, the County and Lessee have entered into a Lease Agreement, dated July 19, 1988, with Gold Coast Racks, Inc., which Lease Agreement was assigned to the Lessee and amended by Addendum on November 21, 1989 and further amended September 25, 1990 (together the "Agreement"); and

WHEREAS, the Amendment dated September 25, 1990 waived payment of $1,500.00 per month for 36 months in exchange for the donation of certain equipment and improvements to the County; and

WHEREAS, the Lessee desires that the remaining balance of payments to be waived be accelerated and the total be applied to current and past payments due to the County which have been only partially paid due to difficult economic circumstances; and

WHEREAS, the County has realized benefit of the donated equipment and improvements since the time of donation and does not object to such acceleration of waived payments and desires to clarify certain existing language,

NOW, THEREFORE, in consideration of the dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and Lessee agree to amend the Agreement as follows:

1. Payment for Additional Space:...

   "In addition to existing minimum rental guarantee and percentage payments, the Lessee shall pay $1500 per month or any portion of a month as additional rent. ~~This additional rent will not be changed for a period of 36 months, after which this additional rent shall be reviewed in accordance with the terms of the Lease.~~ This additional rent will not be changed for a period of 36 months or, alternatively, the Lessee may apply the amount to be waived ($1500 per month x 36 months = $54,000) against any payment due the County as that payment is due."

   (The language marked out with dashes shall be deleted. The underscored language shall be inserted.)

2. No other terms or conditions are hereby amended and all unamended terms and conditions are hereby reaffirmed and ratified.

IN WITNESS WHEREOF, the County and Lessee have caused their duly authorized representatives to execute this Lease Amendment as of the 1ST day of October, 1991.

ATTEST: Marshall Ader
Clerk of the Board

By: _____
Deputy Clerk

METROPOLITAN DADE COUNTY,
FLORIDA
By Its Board of County Commissioners

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

HAULOVER RESORT MARINA, INC.

By: _____
Richard Gregory
Secretary

By: _____
Richard Gregory
President

(SEAL)

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, MARSHALL ADER, 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-1110-91 , adopted by the said Board of County Commissioners at its meeting held on October 1 , 1991 .

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 2nd day of October , A.D. 1991 .

MARSHALL ADER, Clerk
Board of County Commissioners
Dade County, Florida

By Elizabeth Adorno
Deputy Clerk

SEAL

Board of County Commissioners
Dade County, Florida

102.01-3 Rev. 12/90 METRO-DADE/GSA-MAT MGT

LEASE AMENDMENT

THIS LEASE AMENDMENT, made this _____ day of _____, 1991, by and between METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida, (the "County") and HAULOVER RESORT MARINA, INC., a Florida corporation, (the "Lessee"):

WITNESSETH

WHEREAS, the County and Lessee have entered into a Lease Agreement, dated July 19, 1988, with Gold Coast Racks, Inc., which Lease Agreement was assigned to the Lessee and amended by Addendum on November 21, 1989 and further amended September 25, 1990 (together the "Agreement"); and

WHEREAS, the Amendment dated September 25, 1990 waived payment of $1,500.00 per month for 36 months in exchange for the donation of certain equipment and improvements to the County; and

WHEREAS, the Lessee desires that the remaining balance of payments to be waived be accelerated and the total be applied to current and past payments due to the County which have been only partially paid due to difficult economic circumstances; and

WHEREAS, the County has realized benefit of the donated equipment and improvements since the time of donation and does not object to such acceleration of waived payments and desires to clarify certain existing language,

NOW, THEREFORE, in consideration of the dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and Lessee agree to amend the Agreement as follows:

1. Payment for Additional Soace:..

   "In addition to existing minimum rental guarantee and percentage payments, the Lessee shall pay $1500 per month or any portion of a month as additional rent. ~~This additional rent will not be changed for a period of 36 months, after which this additional rent shall be reviewed in accordance with the terms of the Lease.~~ This additional rent will not be changed for a period of 36 months or, alternatively, the Lessee may apply the amount to be waived ($1500 per month x 36 months = $54,000) against any payment due the County as that payment is due."

   (The language marked out with dashes shall be deleted. The underscored language shall be inserted.)

2. No other terms or conditions are hereby amended and all unamended terms and conditions are hereby reaffirmed and ratified.

IN WITNESS WHEREOF, the County and Lessee have caused their duly authorized representatives to execute this Lease Amendment as of the _____ day of _____, 199___.

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, MARSHALL ADER, 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-1110-91 , adopted by the said Board of County Commissioners at its meeting held on October 1 , 1991 .

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 2nd day of October , A.D. 1991 .

MARSHALL ADER, Clerk
Board of County Commissioners
Dade County, Florida

By Elizabeth Adorno
Deputy Clerk

SEAL

Board of County Commissioners
Dade County, Florida

102.01-3 Rev. 12/90 METRO-DADE/GSA-MAT MGT

Attachment 2

Agenda Item No. 5(A)(4)
4-4-95

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.

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, HARVEY RUVIN, 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-409-95, adopted by the said board of County Commissioners at its meeting held on April 4, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 5th day of April, A.D. 1995.

HARVEY RUVIN, Clerk
Board of County Commissioners
Dade County, Florida

By C. Phillippe
Deputy Clerk

COUNTY COMMISSIONERS DADE COUNTY FLORIDA SEAL

Board of County Commissioners
Dade County, Florida

CLK/CT 587 3/93

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

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.

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
Jeffrey K. Ellis, VICE-PRESIDENT

DATE: April 24, 1996

By: Michael M. Sachs
Michael M. Sachs, PRESIDENT

(seal)

DATE: April 24, 1996

PROMISSORY NOTE

$171,733.80

Miami, Florida
May 1, 1995

FOR VALUE RECEIVED the undersigned WESTREC FINANCIAL, INC., a California Corporation, ("Maker"), promises to pay to the order of METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida, together with any other holder of this Note ("Holder"), at 111 N. W. 1st Street, Miami, Florida 33130, Attention: County Manager, or such other place as Holder may from time to time designate in writing, the principal sum of One Hundred Seventy One Thousand Seven Hundred Thirty Three and 80/100 Dollars ($171,733.80) the ("Principal Amount"), to be paid in lawful money of the United States of America in accordance with the terms of this Note.

This Note is made as security for the obligation of Westrec Equities, Inc. pursuant to Paragraph 5 of that certain Assignment and Amendment of Lease executed by Metropolitan Dade County and Westrec Equities, Inc., affiliate of the Maker, on or about May 1,1995. The foregoing and all other agreements, instruments and documents, including the Lease Agreement delivered in connection with each and with this Note are collectively referred to as the "Lease Documents."

All obligations of Maker hereunder shall be fully paid, and all remaining principal and interest, if any, shall be due and payable on May 31, 2005 (the "Maturity Date").

a) Maker shall pay on or before May 1, 1995, the amount of thirty six thousand dollars ($36,000); and

b) Maker shall pay, on the first day of each month thereafter for one hundred twenty (120) months, the amount of one thousand dollars ($1,000.00); and

c) Maker shall pay any and all remaining arrearages under the Lease Documents that may be due at the end of the one hundred-twentieth (120th) month; and

d) Maker 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 1. The parties agree that these late fees are fair and reasonable charges for the late payment and shall not be deemed a penalty.

e) Notwithstanding the above, Maker shall have the right to pay all outstanding arrearages in amounts greater than specified above or in full without penalty.

This Note has been executed and delivered in, and is to be governed by and construed under the laws of the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Maker shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by Florida law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Maker ("Excess Sum") shall be credited as a payment of principal, or, if Maker so requests in writing, returned to Maker, or if the Principal Amount and interest on such Principal Amount have been paid in full, returned to Maker together with interest at the same rate as was paid by Maker during such period. Any Excess Sum credited to principal shall be credited as of the date paid to Holder. The Maximum Rate varies from time to time and from time to time there may be no specific Maximum Rate. Holder may, without such action constituting a breach of any obligations to Maker, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Maker.

The "Default Interest Rate" and, in the event no specific Maximum Rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Holder shall have the right to declare the total unpaid balance of this Note to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due, taking into account applicable grace periods, any payment of principal or interest or other amount due under this Note; or upon the occurrence of an event of default pursuant to any one of the Lease Documents. Holder shall notify Maker in writing of Holder's intention to declare the total unpaid balance of the Note due and payable and shall specify the failure or default that has occurred. Maker shall have 10 business days after receipt of the notice to cure the failure or default. If the failure or default is not cured within said 10-day period, the total unpaid balance under the Note shall be immediately due and payable.

Any payment under this Note not paid when due (at maturity, upon acceleration or otherwise) taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid.

Time is of the essence. In the event that this Note is collected by law or through attorneys at law, or under their advice therefrom, Maker agrees, to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collecting, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due under this Note, and shall not affect the right of Holder to pursue all remedies available to it under the Lease Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefore shall arise. No action or omission of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only to the extent specifically recited in a written document executed by Holder. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a cause of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon the Maker or the Holder in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Lease Documents.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments and or (ii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability, and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof.

BY EXECUTING THIS NOTE, MAKER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OF OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HEREWITH OR WITH THE INDEBTEDNESS OF THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER.

Maker acknowledges that the provisions of this Note have been expressly bargained for by Dade County, Florida as part of the transaction with Maker and Westrec Equities, Inc. and that, but for Maker's agreement to such terms, Dade County, Florida would not have entered into the Lease Documents.

WESTREC FINANCIAL, INC.,
a California corporation

BY: _____

Michael P. Robbins
Vice-President
16633 Ventura Blvd.
Encino, California 91436

CERTIFICATE OF SECRETARY
WESTREC FINANCIAL, INC.

The undersigned, Michael M. Sachs, being the secretary of Westrec Financial, Inc., certifies that the resolution set forth below was adopted by the Board of Directors of the Corporation as of May 1, 1996:

> WHEREAS: As of May 1, 1995 Westrec Equities, Inc., a subsidiary of this corporation, became the tenant under a Lease and Agreement dated July 19, 1988, as amended (the "Lease") with Metropolitan Dade County (the "County") as landlord. The leased area under the Lease is Haulover Marine Center.
>
> WHEREAS: As a condition to the County granting permission for Westrec Equities, Inc. to become the tenant under the Lease, this corporation was required to execute a Promissory Note in the principal amount of $171,733.80 payable to the County, to guarantee payment of amounts owed under the Lease prior to Westrec Equities, Inc. becoming a tenant,
>
> NOW THEREFORE BE IT RESOLVED THAT: This corporation shall execute a Promissory Note in the principal amount of $171,733.80 payable to Dade County in the form attached hereto as Exhibit A.

RESOLVED FURTHER: That Michael P. Robbins or any other officer of this corporation is authorized to execute the Note on behalf of this corporation.

Certified as of August 7, 1996

Michael M. Sachs

D:\Date\mh\minutes\CertofSec.WFI

TED STATES BANKRUPTCY COUI
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 94-10176-BKC-AJC
Chapter 11 Proceeding

In re:

HAULOVER RESORT MARINA, INC.,
a/k/a Haulover Marine Center,

Debtor.
_____/

ORDER AUTHORIZING AND APPROVING CHAPTER 11 TRUSTEE'S SALE OF ASSETS AND ASSUMPTION AND/OR ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO WESTREC MARINA MANAGEMENT, INC.

THIS MATTER was heard by the Court on February 28, 1995 on the Motion of Chapter 11 Trustee for Order Authorizing Sale of Assets Free and Clear of Liens and Assumption and/or Assignment of Certain Executory Contracts and Unexpired Lease to Westrec Marina Management, Inc. or to Any Higher or Better Offeror (the "Motion"). The Motion was filed by Soneet R. Kapila, as Chapter 11 Trustee for the estate of Haulover Resort Marina, Inc. ("Haulover" or the "Debtor"). The Court finds that due and timely notice of the hearing was given by the Trustee to creditors and other parties in interest in accordance with Bankruptcy Rules 2002 and 6004. No objections to the Motion were timely filed with the Court or voiced at the hearing, although Metropolitan Dade County ("Dade County") filed a response seeking clarification of certain issues.

The Trustee seeks authorization to sell the assets free and clear of liens, security interests, encumbrances and other interests, and to assume and assign the Debtor's lease with Dade

3/8/95

County (the "Dade County Lease"). Any and all liens, on or other interests in, the assets would attach to the proceeds of sale, without prejudice to the right of the trustee to contest the validity, priority or amount of any liens or interests asserted. At the conclusion of the hearings, the highest and best offer was made by Westrec Management Inc. ("Westrec"). The Trustee and Westrec have entered into an Agreement dated February 7, 1994 (the "Agreement") which sets forth the specific terms and conditions of the transactions. The lien of Westrec was fixed at $185,000 pursuant to the Agreement, which lien served as a portion of Westrec's credit bid in this case, and, accordingly, Westrec's lien will not attach to any of the proceeds of sale. A true copy of the Agreement is attached hereto and incorporated herein as an Exhibit. Dade County has consented to the sale and assignment of the Dade County Lease to Westrec.

The Court having considered the Motion and the Agreement, and the Court having further considered the arguments of counsel, sufficient cause having been shown for authorizing the sale to proceed as requested, all creditors and parties in interest having been afforded the opportunity to object to the sale and/or the present offers to the Trustee, and the Court being otherwise fully advised in the premises, it is hereby FOUND AND DETERMINED that:

1. The Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code with this Court on January 18, 1994.

2. Soneet R. Kapila was appointed as Chapter 11 Trustee on December 15, 1994.

3. The Debtor, under the supervision and control of the Trustee, is engaged in the marina business at Haulover Park in Dade County, Florida.

4. The business of the Debtor operates at Haulover Park pursuant to the Dade County Lease. The Dade County Lease was executed on July 19, 1988 for a term of ten years, with an option to renew in favor of the lessee for an additional 5 year period.

5. Westrec holds a first security interest in substantially all the assets of the Debtor, as assignee of SunBank/Miami, N.A., and a superpriority lien and administrative claim in the amount of a maximum of $40,000 for post-petition advances made to the estate. Westrec has consented to the sale free and clear of its liens provided that (i), if the unsuccessful bidder, it receive payment of $185,000 from the proceeds of sale in satisfaction of its secured claim and lien acquired from SunBank, (ii) if the unsuccessful bidder, it receive payment of up to $40,000 for its actual unpaid post-petition advances, or (iii), if the successful bidder, that it be allowed to credit bid its secured claims and liens.

6. The assets to be sold to Westrec include substantially all the assets of the Debtor, including, but not limited to, equipment, machinery, furniture, fixtures, accounts receivable, cash on hand, trade names and various other assets as specified in the Agreement, and the Buyer will take an assignment of the Debtor's rights and obligations after closing under the Dade County Lease, as modified by the letter proposal to Dade County from Westrec dated February 17, 1995 and introduced as an exhibit at the hearing by the Trustee.

7. Excluded from the sale are bankruptcy claims and causes of action, the books and records of the Debtor (which the Trustee shall make available to Westrec upon the terms set forth in the Agreement), any deposits held by third parties that may be recoverable by the Trustee, with all of the foregoing as specified in the Agreement.

8. The highest and best offer has been made by Westrec after bidding with Professional Miami Marina Management, Inc. ("PMMM"). PMMM's bid, due to unresolved contingencies, was deemed by this Court not to be higher or better than the bid of Westrec. A reasonable opportunity was offered to other persons and entities to make higher and better offers to purchase the assets. Including credit bids, Westrec's offer was $360,000.00 plus assumption of various liabilities as more fully set forth in the Motion and its attached exhibits.

9. Westrec is a purchaser acting in good faith, as that term is utilized in 11 U.S.C. § 363, and the Agreement has been negotiated in good faith and at arms' length by and between the Trustee and Westrec.

10. The Trustee has advanced sound business reasons for seeking to sell the assets and assume and/or assign the Dade County Lease, as set forth in the Motion, and it is a reasonable exercise of the Trustee's business judgment and it is in the best interest of the estate for the Trustee to enter into the Agreement and for the Trustee to execute, deliver and perform his obligations thereunder.

11. The total consideration to be realized by the estate pursuant to the Agreement is fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the estate.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. Pursuant to 11 U.S.C. §§ 363(b) and (f) and 365, and for the total consideration provided for under the Agreement and pursuant to the terms and conditions thereof, the Trustee is hereby authorized to sell the assets, and assume and assign the Dade County Lease to Westrec.

2. The Agreement and its terms are hereby approved in their entirety, and the Trustee is hereby authorized, empowered and directed to execute, deliver and perform all things necessary to

effectuate this Order and to consummate the transactions contemplated by the Agreement, including the payments to be made to Westrec from the sale proceeds.

3. Pursuant to §363(b) and (f) of the Bankruptcy Code, the Assets are hereby sold and transferred to Westrec free and clear of any and all liens, encumbrances, claims whether or not allowable (as such terms are defined in the Bankruptcy Code), security interests, title retentions, charges and any other interest in such property of an entity other than the Debtor including, without limitation, that asserted by the Dade County Tax Collector (collectively, the "Encumbrances"), in existence as of the date of Closing, whether arising prior or subsequent to the filing date of the voluntary petition in bankruptcy of the Debtor, with such Encumbrances thereafter only attaching to the proceeds of sale, with the same priority, validity, force and effect as they now have against the assets. Nothing contained herein shall be deemed to prevent the Trustee from seeking a determination from this Court of the validity, priority and extent of any Encumbrance asserted against the proceeds of sale. The liens of Westrec identified in Paragraph 5 of this order supra, which were asserted as credit bids shall terminate upon closing and shall not attach to the proceeds of sale.

4. The provisions of this Order authorizing the sale of the assets free and clear of Encumbrances shall be self-executing, and neither the Trustee nor Westrec shall be required to execute or file releases, termination statements, assignments, consignments, or other instruments in order to effectuate, consummate and implement the foregoing provisions thereof, provided, however, that this decretal paragraph shall not excuse such parties for performing any and all of their respective obligations under the Agreement and this Order.

5. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and/or appropriate to consummate the transactions contemplated by the Agreement. Closing of the transactions authorized by this Order shall occur within or on ten days from the entry of this Order, and is not conditioned upon Westrec receiving final authorization from Dade County to assume the Dade County Lease or any other remaining contingencies. Should Westrec fail to close the transactions authorized herein, Westrec shall waive its superiority claim for post-petition financing (capped at $40,000), which was credit bid by Westrec, and shall forfeit the $50,000 Westrec agreed on the record at the hearing to deposit in escrow with the Trustee within 24 hours.

6. This Order shall be binding upon the Trustee, the Debtor and Westrec and their respective successors and assigns.

7. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of the Agreement and this Order.

8. The Trustee and Westrec shall be entitled to the protection of 11 U.S.C. § 363(m) with respect to the sale of the Assets approved and authorized herein in the event this Order or any authorization contained herein is reversed or modified on appeal.

9. The sale approved by this order is not subject to avoidance pursuant to 11 U.S.C. 363(n).

10. Any other entity that has an interest in the Assets is deemed to consent to the sale approved by this Order.

ORDERED in the Southern District of Florida on this 2nd day of March, 1995.

A. JAY CRISTOL

A. JAY CRISTOL
U.S. Bankruptcy Court Judge

Copies furnished to:

David M. Levine, Esq.
Counsel for the Trustee

2-95
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(Atty. Levine is directed to mail a conformed copy immediately upon receipt of same to all creditors and interested parties).

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	82733.80	1000.00	1226.01	65.00	2291.01	81733.80
	81733.80	1000.00	1211.01	65.00	2276.01	80733.80
	80733.80	1000.00	1196.01	65.00	2261.01	79733.80
	79733.80	1000.00	1181.01	65.00	2246.01	78733.80
	78733.80	1000.00	1166.01	65.00	2231.01	77733.80
	77733.80	1000.00	1151.01	65.00	2216.01	76733.80
	70733.80	1000.00	1046.01	65.00	2111.01	69733.80
	69733.80	1000.00	1031.01	65.00	2096.01	68733.80
	68733.80	1000.00	1016.01	65.00	2081.01	67733.80
	67733.80	1000.00	1001.01	65.00	2066.01	66733.80
	66733.80	1000.00	986.01	65.00	2051.01	65733.80
	65733.80	1000.00	971.01	65.00	2036.01	64733.80
	58733.80	1000.00	866.01	65.00	1931.01	57733.80
	57733.80	1000.00	851.01	65.00	1916.01	56733.80
	56733.80	1000.00	836.01	65.00	1901.01	55733.80
	55733.80	1000.00	821.01	65.00	1886.01	54733.80
	54733.80	1000.00	806.01	65.00	1871.01	53733.80
	53733.80	1000.00	791.01	65.00	1856.01	52733.80
	46733.80	1000.00	686.01	65.00	1751.01	45733.80
	45733.80	1000.00	671.01	65.00	1736.01	44733.80
	44733.80	1000.00	656.01	65.00	1721.01	43733.80
	43733.80	1000.00	641.01	65.00	1706.01	42733.80
	42733.80	1000.00	626.01	65.00	1691.01	41733.80
	41733.80	1000.00	611.01	65.00	1676.01	40733.80

REPAYMENT SCHEDULE

	Beginning Balance	Principal Payment	Late Fee Payment	Sales Tax Payment	Total Payment	Ending Balance
May-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jun-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jul-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aug-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sep-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oct-95	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-95	130733.80	1000.00	1946.01	65.00	3011.01	129733.80
Dec-95	129733.80	1000.00	1931.01	65.00	2996.01	128733.80
Jan-96	128733.80	1000.00	1916.01	65.00	2981.01	127733.80
Feb-96	127733.80	1000.00	1901.01	65.00	2966.01	126733.80
Mar-96	126733.80	1000.00	1886.01	65.00	2951.01	125733.80
Apr-96	125733.80	1000.00	1871.01	65.00	2936.01	124733.80
May-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jun-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jul-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aug-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sep-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oct-96	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-96	118733.80	1000.00	1766.01	65.00	2831.01	117733.80
Dec-96	117733.80	1000.00	1751.01	65.00	2816.01	116733.80
Jan-97	116733.80	1000.00	1736.01	65.00	2801.01	115733.80
Feb-97	115733.80	1000.00	1721.01	65.00	2786.01	114733.80
Mar-97	114733.80	1000.00	1706.01	65.00	2771.01	113733.80
Apr-97	113733.80	1000.00	1691.01	65.00	2756.01	112733.80
May-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jun-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jul-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aug-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sep-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oct-97	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-97	106733.80	1000.00	1586.01	65.00	2651.01	105733.80
Dec-97	105733.80	1000.00	1571.01	65.00	2636.01	104733.80
Jan-98	104733.80	1000.00	1556.01	65.00	2621.01	103733.80
Feb-98	103733.80	1000.00	1541.01	65.00	2606.01	102733.80
Mar-98	102733.80	1000.00	1526.01	65.00	2591.01	101733.80
Apr-98	101733.80	1000.00	1511.01	65.00	2576.01	100733.80
May-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jun-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jul-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aug-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sep-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oct-98	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-98	94733.80	1000.00	1406.01	65.00	2471.01	93733.80
Dec-98	93733.80	1000.00	1391.01	65.00	2456.01	92733.80
Jan-99	92733.80	1000.00	1376.01	65.00	2441.01	91733.80
Feb-99	91733.80	1000.00	1361.01	65.00	2426.01	90733.80
Mar-99	90733.80	1000.00	1346.01	65.00	2411.01	89733.80
Apr-99	89733.80	1000.00	1331.01	65.00	2396.01	88733.80

Westred Equities Repayment Schr le EXHIBIT 2

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-2003	34733.80	1000.00	506.01	65.00	1571.01	33733.80
Dec-2003	33733.80	1000.00	491.01	65.00	1556.01	32733.80
Jan-2004	32733.80	1000.00	476.01	65.00	1541.01	31733.80
Feb-2004	31733.80	1000.00	461.01	65.00	1526.01	30733.80
Mar-2004	30733.80	1000.00	446.01	65.00	1511.01	29733.80
Apr-2004	29733.80	1000.00	431.01	65.00	1496.01	28733.80
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov-2004	22733.80	1000.00	326.01	65.00	1391.01	21733.80
Dec-2004	21733.80	1000.00	311.01	65.00	1376.01	20733.80
Jan-2005	20733.80	1000.00	296.01	65.00	1361.01	19733.80
Feb-2005	19733.80	1000.00	281.01	65.00	1346.01	18733.80
Mar-2005	18733.80	1000.00	266.01	65.00	1331.01	17733.80
Apr-2005	17733.80	1000.00	251.01	65.00	1316.01	16733.80
May-2005	16733.80	1000.00	236.01	65.00	1301.01	15733.80
May-31-2005	15733.80	15733.80	0.00	1022.70	16756.50	

EXHIBIT D

ATTACHMENT 1 TO ASSIGNMENT AND AMENDMENT OF LEASE

DATED MAY 1, 1995 BETWEEN

METROPOLITAN DADE COUNTY AND WESTREC EQUITIES, INC.

LEGAL DESCRIPTION OF PREMISES COVERED BY LEASE

Parcel 1 (Haulover Marine Center):

That portion of land on Lots 55, 56, 57, 58, 59 and 60 of PLAT OF TATUM'S OCEAN BEACH PARK, according to the Plat thereof, as recorded in Plat Book 5, at Page 35, of the Public Records of Dade County, Florida, being more particularly described as follows:

Commence at the Southeast corner of Tract "A" of ARLEN HOUSE EAST, according to the Plat thereof, as recorded in Plat Book 97, at Page 5, of the Public Records of Dade County, Florida; thence run S 04°08'44" W, along the West Right of Way line of Florida State Road A1A, a distance of 1683.25 feet to a point; thence run S 85°55'10" W a distance of 484.52 feet to the POINT OF BEGINNING, said point being the point of intersection of the waterward faces of existing concrete bulkhead at the Southwest corner of the existing boat launching area; thence run Northwesterly N 24°57'49" W along the waterward face of said concrete bulkhead, a distance of 47.18 feet; thence run S 64°50'36" W a distance of 8.23 feet; the next (5) courses are along the Easterly, Northerly and Westerly edges of existing rock rip rap; (1) thence departing concrete bulkhead, N 20°13'53" W for 58.85 feet; (2) thence N 15°06'41" W for 101.77 feet; (3) thence S 74°53'19" W for 7.00 feet; (4) thence S 15°06'41" E for 102.08 feet (5) thence S 20°13'53" E for 59.76 feet; thence S 11°50'41" E for 34.88 feet; thence S 09°22'33" W for 16.32 feet; thence S 57°57'49" W for 32.81 feet; thence S 25°39'57" W for 36.88 feet; thence S 25°42'49" E for 36.15 feet; thence S 07°53'59" E for 63.30 feet; thence S 07°49'00" W for 171.39 feet; thence S 12°40'33" E for 28.30 feet; thence S 80°20'33" E for 118.25 feet; thence N 08°28'55" E for 52.02 feet; thence S 81°31'05" E for 26.50 feet; thence N 08°28'55" E for 162.70 feet; thence S 81°31'05" E for 20.00 feet; thence N 14°58'55" E for 34.00 feet; thence N 08°28'55" E for 87.00 feet; thence N 36°31'05" W for 55.00 feet; thence N 56°35'22" W for 78.33 feet; thence S 56°21'47" W for 62.49 feet to the POINT OF BEGINNING.

Containing 66,142 square feet or 1.518 acres, more or less.
Lying in Sections 14 and 23, Township 52 South, Range 42 East, Dade County, Florida.

LEGAL DESCRIPTION

A parcel of land lying Westerly of and adjacent to Lots 58, 59 and 60 of PL OF TATUM'S OCEAN BEACH PARK according to the Plat thereof, as recorded in Plat Book 5 . Page 35 of the Public Records of Dade County, Florida, lying in Biscayne Bay, being more particularly described as follows:

Commence at the Southeast corner of Tract "A" of ARLEN HOUSE EAST according to the Plat thereof, as recorded in Plat Book 97 at Page 5, of the Public Records of Dade County, Florida; thence run S 04°08'44" W along the West Right of Way line of Florida State Road AIA for 1683.25 feet to a point; thence run S 85°55'10" W a distance of 484.52 feet to the POINT OF BEGINNING, said point being the point of intersection of the waterward faces of existing concrete bulkhead at the Southwest corner of the existing boat launching area; thence run Northwesterly N 24°57'49" W along the waterward face of said concrete bulkhead, a distance of 47.18 feet; thence S 64°50'36" W for 15.25 feet; thence N 16°06'57" W for 127.94 feet; thence N 02°15'22" W for 108.56 feet; thence N 87°43'59" E for 17.76 feet; thence S 26°10'27" E for 141.97 feet; thence S 42°05'37" E for 110.35 feet; thence S 49°11'10" W for 35.32 feet; thence S 56°21'47" W for 64.99 feet to the POINT OF BEGINNING.

Containing 17,373 square feet or 0.399 acres, more or less.

Lying in Sections 14 and 23, Township 52 South, Range 42 East, Dade County, Florida.

Parcel 2 (The Point in Haulover Park):

A portion of Lots 11, 12 and 13, PLAT OF TATUM'S OCEAN BEACH PARK according to the Plat thereof, as recorded in Plat Book 5 at Page 35 of the Public records of Dade County Florida, being more particularly described as follows:

Commence at the Southeast corner of Tract "A" of ARLEN HOUSE EAST according to the Plat thereof, as recorded in Plat Book 97 at Page 5, of the Public Records of Dade County, Florida; thence run S 04°03'06" W along the West Right of Way line of Florida State Road AIA for 1683.25 feet; thence S 14°21'12" W for 4719.00 feet to the POINT OF BEGINNING, said point being on the waterward face of the existing concrete bulkhead; thence run S 43°58'00" W for 40.50 feet to a Point of Curvature; thence Southwesterly and Westerly, along said bulkhead face, being along an 86.80 foot radius curve leading to the right through a central angle 52°40'11" for an arc distance of 79.79 feet; thence S 24°40'00" W for 29.54 feet; thence S 10°28'00" E for 28.68 feet; the previous four (4) courses have been along the waterward face of the existing concrete bulkhead; the following course is along the waterward face of the existing concrete bulkhead and its extension Southeasterly, thence S 59°09'00" E for 76.24 feet; thence on a bearing of East for 28.69 feet; thence N 06°55'00" E for 46.19 feet; thence N 43°58'00" E for 80.00 feet; thence N 46°02'00" W for 66.00 feet to the POINT OF BEGINNING.

Containing 12,254 sq. ft. or 0.281 acres, more or less.
Lying in Section 23, Township 52 South, Range 42 East, Dade County, Florida.

LEGAL DESCRIPTION: THE POINT (SUBMERGED)

A parcel of land lying Westerly of and adjacent to Lots 11, 12 and 13, PLAT OF TATUM'S OCEAN BEACH PARK according to the Plat thereof, as recorded in Plat Book 5 at Page 35 of the Public Records of Dade County, Florida, lying in Biscayne Bay, being more particularly described as follows:

Commence at the Southeast corner of Tract "A" of ARLEN HOUSE EAST according to the Plat thereof, as recorded in Plat Book 97 at Page 5, of the Public Records of Dade County, Florida; thence run S 04°03'06" W along the West Right of Way line of Florida State Road A1A for 1683.25 feet; thence S 14°21'12" W for 4719.00 feet to the POINT OF BEGINNING, said point being on the waterward face of the existing concrete bulkhead; thence run S 43°58'00" W for 40.50 feet to a Point of Curvature; thence Southwesterly and Westerly, along said bulkhead face, being along an 86.80 foot radius curve leading to the right through a central angle 52°40'11" for an arc distance of 79.79 feet; thence S 24°40'00" W for 29.54 feet; thence S 10°28'00" E for 28.68 feet; thence S 59°09'00" E for 17.69 feet; thence, departing from the bulkhead, on a bearing of South for 100.74 feet; thence on a bearing of West for 40.00 feet; thence S 59°09'00" E for 10.00 feet to a point on a circular curve, said point Bearing S 79°48'31" W from the radius point; thence Northerly along a 339.38 foot radius curve leading to the right through a central angle of 37°12'33" for an arc distance of 220.40 feet; thence N 04°54'57" E for 10.00 feet; thence S 85°05'03" E for 109.00 feet to the POINT OF BEGINNING.

Containing 12,872 sq. ft. or 0.295 acres, more or less.

Lying in Section 23, Township 52 South, Range 42 East, Dade County, Florida.