MEMORANDUM

Agenda Item No. 8(H)(2)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	December 15, 2015
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution approving Sublease Agreement between 33032 Partners, Ltd., and Ocean Grill Enterprises, LLC to operate the restaurant and dock area at Black Point Marina

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: December 15, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Sublease Agreement for Operation of Restaurant and Dock Area at Black Point Marina

---

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the Sublease Agreement (Sublease) between 33032 Partners, Ltd. (33032 Partners) and Ocean Grill Enterprises, LLC (Ocean Grill) to allow for Ocean Grill to operate the restaurant and dock area at Black Point Marina.

Scope

Black Point Marina is located at 24775 SW 87 Avenue, Miami, Florida, 33032 in County Commission District 8, which is represented by Commissioner Daniella Levine Cava.

Fiscal Impact

As a result of this Sublease, the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS) will receive (5) five percent of the monthly percentage payments from gross revenue made from the restaurant by the Ocean Grill and five (5) percent of the monthly rent payments made to 33032 Partners. The County received a total of $481,844.45 in revenue from 33032 Partners in FY 2014-15, including an amount of $242,106.62 from the restaurant operations, which was placed into Black Point Marina index codes PRRBLP482724 and PRRBLP485724. Revenue from the Master Lease with 33032 Partners is anticipated to increase in future years.

Track Record/Monitor

PROS's Chief of Contract Management and Procurement, Bill Solomon, will manage and monitor the Sublease.

Background

On July 5, 1988, the Board approved the Lease Agreement (R-892-88) with Marine Management, Inc. for the development and operation of dry rack storage and other related services at the Miami-Dade County's Black Point Park Marina. This agreement was amended by the Board on February 1, 1994. The Lease Agreement was assigned to Marina Fund Group, Inc., pursuant to Resolution No. R-1312-98, on December 1, 1998. The Lease Agreement was further modified by Resolution No. R-510-02 on May 21, 2002, and eventually assigned to 33032 Partners by Resolution No. R-865-04 on September 30, 2004. Currently, there is a final expiration date of January 31, 2034.

33032 Partners would like to enter into a Sublease (Attachment A) with Ocean Grill for the operation of the restaurant and dock area, for an initial term of five (5) years, and subsequent five-year renewals, provided that there has been no default, to expire no later than the expiration date of the Master Lease. Under the proposed Sublease, Miami-Dade County will receive five (5) percent of monthly gross receipts from all sources, to include gross revenue from the restaurant and dock area by Ocean Grill, as well as monthly rental revenue. The proposed Sublease includes rental revenue to 33032 Partners in the amount of $6,372.13 per month.

A sublease is allowable under the lease agreement with 33032 Partners. According to the 2002 lease amendment (R-510-02, Section 22), sub-lessee percentage payment terms are at the same percentage rate as stated in Section 10 of the actual lease agreement with the County. In addition, any payments to the Master Lessee by the sub-lessee shall also be subject to percentage payment terms to the County. There is no need for a lease amendment.

Attachment

Michael Spring, Senior Advisor
Office of the Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 15, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(H)(2)

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**

_____ **Statement of social equity required**

_____ **Ordinance creating a new board requires detailed County Mayor'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(H)(2)
12-15-15

RESOLUTION NO. _____

RESOLUTION APPROVING SUBLEASE AGREEMENT BETWEEN 33032 PARTNERS, LTD., AND OCEAN GRILL ENTERPRISES, LLC TO OPERATE THE RESTAURANT AND DOCK AREA AT BLACK POINT MARINA

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 MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Sublease Agreement ("Sublease") in substantially the form attached hereto as Attachment A and made a part hereof between 33032 Partners, Ltd. and Ocean Grill Enterprises, LLC, to operate the restaurant and dock area at Black Point Marina, and directs the County Mayor or Mayor's designee to provide copy of sublease to Property Appraiser within 30 days of approval.

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:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of December, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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. MMRP

Monica Rizo Perez

ATTACHMENT A

SUBLEASE

This Sublease is entered into by and between 33032 Partners, Ltd., a Florida limited partnership, ("33032 Partners" or "Sublessor") and Ocean Grill Enterprises, LLC, a Florida limited liability company, ("Ocean Grill" or "Sublessee") as of _____ day of _____, 2015.

WITNESSETH THAT:

Whereas, 33032 Partners is in possession of the premises commonly known as Black Point Marina pursuant to a written lease with Miami-Dade County ("Master Landlord"); and

Whereas, Ocean Grill desires to operate the restaurant and dock area at said premises; and

Whereas, 33032 Partners represents and warrants that, to the best of 33032 Partners knowledge, any handling, transportation, treatment or use of hazardous or toxic substances that have occurred on the premises prior to the commencement of the prior sublease have been in compliance with all applicable Federal, State, and local laws, regulations and ordinances from the date 33032 Partners acquired its interest in the premises until the commencement of the prior sublease; and that no leak, spill, discharge, emission or disposal of hazardous or toxic substances has occurred from the date 33032 Partners acquired it interest in the premises until the commencement of the prior sublease.

NOW, therefore, in consideration of the foregoing recitals, and the mutual covenants and agreements herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree and contract as follows:

1. BASIC TERMS:

(A) Sublessor's Name and Address:

33032 Partners, Ltd.,
d/b/a Loggerhead Marina - Miami
24777 S.W. 87th Avenue
Miami, FL 33032

With a copy to:

33032 Partners, Ltd.
Attn: Raymond E. Graziotto
630 Maplewood Drive, Suite 100
Jupiter, Florida 33458

(B) Sublessee's Name and Address:

Ocean Grill Enterprises, LLC
Attn: Robert Gregory
24775 S.W. 87th Avenue
Cutler Bay, Florida 33032

(C) Premises: the area as depicted on Exhibit "A" attached hereto, located at 24775 S.W. 87th Avenue, Miami, FL 33033 and all fixtures and improvements located in such area, all of which is located within, and is a portion of, the property 33032 Partners leases from the Master Landlord (collectively the Premises and the additional property under the Master Lease hereafter referred to as the "Marina").

(D) Term: 60 Months, commencing on the date of approval of this Sublease by the Miami-Dade County Commissioners and ending on the end of the 60th month after the commencement date. Provided that there has been no default of the Sublease by the Sublessee, or request by the County to terminate, the Sublessor may, by written notice to the County, at least 60 days before the end of the then current term, renew this Sublease for additional 60-month terms. Such terms shall run consecutively so as to make this Sublease continuous in its operation from beginning to its termination, thereafter until either party notifies the other party of its intent to not renew the Sublease at least sixty (60) days prior to the end of the current term, or unless termination is requested by the County, but in any event shall terminate upon the expiration or termination of the Master Lease between Master Landlord and Sublessor.

(E) Rent:

a. Basic Rent: $6,372.13 / per month, plus applicable sales tax, if any.

b. Additional Percentage Rent: Two and one-half percent (2.5%) of the Gross Receipts (as defined below) received from, by or relating to the operations on the Premises in excess of $2,000,000.00 for each year of this Sublease, plus applicable sales tax, if any. The term "Gross Receipts" shall mean the aggregate of all receipts (except sales tax) from all sales or exchanges of merchandise, food, beverages, and other services sold in or from the Premises or picked up by customers from the Premises.

c. All rent, as set forth above, shall be paid monthly.

d. All rent, as set forth above, shall be in addition to any and all

charges imposed under the Master Lease with Miami-Dade County as a result of your business operations.

(F) Concession Fee: See Section 3.2.

(G) Security Deposit: $7,500, previously posted.

(H) Business to be conducted on Premises: marina style restaurant, including bar, and such other activities incidental to the operation of a restaurant

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

All utilities serving the Premises, including but in no way limited to, Water, Gas, Telephone, Electricity, Sewer, Garbage: Sublessee.

(K) Master Landlord: Miami-Dade County, Florida.

(L) Effective Date of Sublease: the date of approval of this Sublease by the Miami-Dade County Commissioners ("Effective Date"). The Management Agreement dated November 1, 2005, between Sublessor and Sublessee shall automatically terminate on the Effective Date.

2. PREMISES

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

2.2 The Master Lease. Sublessee acknowledges that Sublessor's right to occupancy and control of the Premises has been granted pursuant to a lease (the "Master Lease") from Master Landlord. All of Sublessee's rights hereunder are subject and subordinated to the provisions of the Master Lease. Sublessee has received a complete

copy of and reviewed the Master Lease. Sublessor will promptly forward any future amendments to the Master Lease to Sublessee. In the event that the Master Lease shall be terminated for any reason whatsoever, this Sublease shall likewise terminate without further liability to either party or to Master Landlord. During the term of this Sublease, Sublessee does hereby expressly assume and agree, for the benefit of Sublessor and Master Landlord, to perform and comply with and be bound by each and every obligation of and restriction on Sublessor under the Master Lease as such obligations relate to the Premises. Sublessor shall use its best good faith efforts to assist Sublessee in complying with the obligations and requirements of the Master Lease. The obligations that Sublessee has assumed under this Section are hereinafter referred to as "Sublessee's Assumed Obligations." Sublessee shall indemnify and hold Sublessor and Master Landlord free from and harmless and defend Sublessor against all liability, judgments, costs, damages, claims or demands, including reasonable attorney's fees arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

3. RENT.

3.1 Basic Rent. All Basic Rent shall be payable in advance, on the tenth day of each calendar month during the term of this Sublease. If the first month of the Sublease is a partial calendar month, Basic Rent shall be due on the first day of the term of this Sublease for that partial month. Sublessee shall have a five day right to cure for any financial default, including failure to maintain insurance, and a fifteen day right to cure for any non-monetary defaults. Base Rent shall increase on each anniversary date of the Effective Date for the duration of this Sublease in an amount equal to two and one-half percent (2.5%) of the prior year's Base Rent.

3.1.1 Additional Rent. Sublessee shall pay to Sublessor, within thirty (30) days of the end of each full year or partial year thereafter, beginning on the first anniversary of the Effective Date, all amounts as set forth in Section 1.(E)b. of this Sublease, plus applicable sales tax.

3.2 Concession Fees. Sublessee shall pay to Sublessor, on the tenth day of each month following the month they were incurred, all amounts ("Concession Fees") payable to Master Landlord under the Master Lease on account of Sublessee's operations at the Premises or otherwise pursuant to this Sublease. Sublessee acknowledges that it has received, read and understands the provisions of the Master Lease. With the payment of the Concession Fee, Sublessee shall provide to Sublessor a report and analysis setting forth the Gross Receipts of Manager for such calendar month, in such detail as is necessary to calculate the Concession Fee. In addition, Sublessee also agrees to provide to Sublessor, on or before the tenth day of each month following the month the Concession Fees were incurred, at Sublessee's expense, such other reports and operating statements required by the Master Lease to be provided on account of its operations within the Premises or determined by Sublessor or Master Landlord to be required to confirm the amount of Concession Fees. Sublessee shall pay any penalties imposed by the Master Landlord

arising as a result of Sublessee's breach of its obligations to furnish reports as required by this Section. Concession Fees are pass through fees to Master Landlord and in no way impact additional percentage rent items as set forth in Section 1.(E) of this Sublease. Sublessee's Concession Fees due are:

3.2.1 Five Percent (5%) of monthly Gross Receipts from gross sales except stated amounts as the same may be adjusted from time to time pursuant to the Master Lease, plus applicable sales tax;

3.2.2 Thirty Five percent (35%) of monthly Gross Receipts from Vending Commissions, as the same may be adjusted from time to time pursuant to the Master Lease, plus applicable sales tax;

3.3 Reports and Audits. Sublessor shall have the right, at any time during regular business hours to inspect the books of Sublessee for purposes of verifying the accuracy of Sublessee's reports related to any Rent based on Sublessee's operations. Sublessor shall have the right upon five (5) days advance notice to Sublessee, to cause an audit to be made of Sublessee's books by an independent firm of certified public accountants to be designated by Sublessor for the purpose of confirming the accuracy of the reports submitted by Sublessee. If the audit discloses an underpayment of Rent, Sublessee shall immediately pay to Sublessor the amount of the underpayment with interest at the maximum lawful rate from the date the payment should have been made, plus a late charge for late payment of Rent. Sublessor shall pay the cost of such audit except that if such audit shall disclose that the portion of Rent based on Sublessee's operations for the applicable period exceeds, by 3% or more, such Rent paid by Sublessee, Sublessee shall immediately pay all costs related to the audit. The occurrence of a discrepancy in the reporting of such Rent of 3% or more shall constitute a default hereunder. Sublessee acknowledges that its records are subject to audit under this Sublease and Master Lease and must retain its records in contemplation of such occurrence. Sublessee agrees, for a period of five (5) years following the close of its fiscal year, to keep at the Premises or at any location in the County where the Premises is located, full and accurate books of accounts and records relative to the transactions in the Premises in accordance with generally accepted accounting principles consistently applied. Without limiting the generality of the foregoing, the following records shall be kept by Sublessee: (a) federal and state income tax returns, (b) state and local sales tax and use tax returns, (c) copies of all sales slips or invoices, (d) bank statements and deposit receipts, (e) paid invoices for purchase of merchandise, (f) merchandising receiving and shipping records, (g) all cash disbursements, cash receipts, sales and purchases, and (h) any other financial information which Sublessor reasonably deems necessary.

3.4 Payment of Rent. Rent payments shall be delivered to Sublessor at Sublessor's address. Checks shall be made payable to the Sublessor. "Rent" hereunder shall include Basic Rent, Concession Fees and Additional Rent, such other sums and expenses payable by Sublessee on the terms and conditions specified in this sublease. Rent

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

3.5. Irrevocable Standby Letter of Credit. In order to ensure Sublessee's prompt performance of future capital improvements to be made at Sublessee's expense, Sublessee agrees to issue Irrevocable Standby Letter of Credit of $25,000.00 in the event of any financial default on the part of the Sublessee within ten (10) days of notice of a monetary default.

4. Security Deposit. Sublessee has deposited with Sublessor the Security Deposit as security for the full performance and observance of each of Sublessee's obligations under this Sublease. If Sublessee is in default under this Sublease, Sublessor may use the whole or any part of the Security Deposit to satisfy any sum due to Sublessor or to defray any expense or damage reasonably incurred by reason of the default. In the event that all or part of the Security Deposit is so used, Sublessee shall on demand pay to Sublessor a like sum to replenish the Security Deposit. Sublessor is not a trustee of the Security Deposit and may commingle it or use it in ordinary business. No interest shall accrue on it. At the termination of this Sublease or any extension or renewal thereof, if Sublessee is not then in default, Sublessor shall return the remaining balance of the Security Deposit to Sublessee or, at Sublessor's election, to the last assignee of Sublessee's interest. If Sublessor shall transfer its interest in the Marina or the Premises during the term of this Sublease, Sublessor may pay the Security Deposit to the transferee and Sublessor will then be released from all liability to Sublessee for the return of the Security Deposit. Upon provision of the standby letter of credit contemplated in Section 3.5, above, the security deposit shall be refunded to Sublessee.

5. Use

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

5.2. No use shall be made or permitted to be made of the Premises, nor any act done, which may increase the existing rates of insurance upon the building(s) located on the Premises or which may cause the cancellation of any insurance policy covering said building or any portion thereof. If any act on the part of Sublessee or use of the Premises by Sublessee shall cause, directly or indirectly, an increase of Sublessor's insurance

expense, said additional expense shall be paid by Sublessee to Sublessor upon demand. Such payment by Sublessee shall not limit Sublessor in the exercise of any rights or remedies. Sublessee, at its sole expense, shall comply with any and all requirements pertaining to the use of the Premises, or of any insurance organization or insurance upon the building and the appurtenances thereto.

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

5.4. Sublessee shall keep the Premises open for business for a minimum of eight hours per day, which shall include at a minimum lunch and dinner services, seven days each week or such other hours as Sublessor and Sublessee may mutually agree, all in accordance with the Master Lease.

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

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

6. COMPLIANCE WITH LAWS / HAZARDOUS MATERIALS.

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

6.2 Hazardous Materials Upon Premises Prohibited: Indemnity. Sublessee shall not have or allow any Hazardous Materials upon, about or beneath the Premises or the Marina, except small quantities of Hazardous Materials commonly used in normal office

operations or for premises cleaning and maintenance and used for those purposes by Sublessee. In no event shall Sublessee install, cause or allow any underground or aboveground storage tank or any condition at the Premises that requires a hazardous waste treatment, storage or disposal permit under the Federal Resource Conversation and Recovery Act, 42 U.S.C. Sections 6901, et seq. or any analogous state or local law. Without limiting the provisions of Section 21.6, Sublessee shall indemnify, defend and hold Sublessor and all officers, directors, partners, shareholders, agents, employees, representatives and affiliates of Sublessor and of any affiliated company harmless from and against any and all Environmental Damages (as defined below) which is attributable to Sublessee's use of the Premises during the term of the Sublease. Sublessee's obligation under this Section shall survive the expiration of this Sublease.

6.3 Definitions

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

(B) "Hazardous Material" means any substance (i) which is or becomes defined as "hazardous" under any Federal, State or Local Law, (ii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is or becomes regulated as such by and Federal, State or Local governmental authority, (iii) the presence of which requires investigation or remediation under any federal, State or Local Law, (iv) which causes or threatens to cause a nuisance upon or waste to the Premises or the Marina, or (v) without limitations contains gasoline, oil, diesel fuel or other petroleum products, asbestos or polychlorinated biphenyls (PCB'S).

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

6.5 Sublessor's Obligations. Sublessor shall indemnify and hold Sublessee, its officers, agents and employees harmless from all claims, costs, damages, demands, expenses, fines, judgments, liabilities and losses, including reasonable attorney's fees, expert fees and consultant fees, which arise during or after the term of this Sublease for or in connection with the presence or suspected presence of toxic or Hazardous Materials in the soil, groundwater or soil vapor on or under the Premises, unless the toxic or hazardous substances are present solely as a result of the conduct of Sublessee, its officers, employees or agents or a third party other than Sublessor.

7. Personnel. All personnel employed by Sublessee shall be clean, neat, courteous,

and responsive to the needs of boat owners and other customers at all times. Sublessee's employees shall park their personal vehicles only in areas designated by Sublessor. Failure of Sublessee's personnel to comply with the foregoing shall constitute a default hereunder. Sublessee shall ensure that Sublessee and all employees are at all times in compliance with all applicable federal, state and local laws, regulations, ordinances and rules.

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

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

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

11. Maintenance. Sublessor shall maintain the structural soundness of the Premises, which portions are limited to foundation, exterior walls and roofs. Sublessee shall, at Sublessee's sole cost and expense, maintain all other portions of the Premises and every part thereof in good, neat and sanitary condition and repair, at all times free from trash and rubbish. Sublessee shall repair all damage to the Premises resulting from use and wear by

Sublessee. Sublessee shall be responsible for the repair or replacement of any broken windows or doors and shall maintain and repair all equipment within the Premises, all heating, ventilating and air conditioning equipment and all electrical facilities within the Premises in a safe and serviceable condition. All repairs and replacements made by Sublessee under this Section or the Section entitled "Damage to Premises" shall be made under the supervision and with the approval of Sublessor, and shall be of a quality equal to the original work. At the reasonable request of Sublessor, Sublessee, at Sublessee's expense, shall remedy any condition on the Premises not in keeping with the pleasing appearance of the Marina. Sublessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Sublessee the right to make repairs at Sublessor's expense or would terminate this Sublease do to Sublessor's failure to keep the Premises in good order, condition and repair. If Sublessee fails to perform its obligations under this Section or the Section entitled "Damage to Premises," Sublessor may, at its option (but shall not be required to), enter upon the Premises, after five days prior written notice to Sublessee, and put the same in reasonably good order, condition and repair, reasonable wear and tear excepted, and the cost thereof together with interest at the maximum lawful rate shall become due and payable as Additional Rent to Sublessor upon its demand. Sublessee will be responsible for the maintenance of the entire fuel system, including tanks and monitoring equipment, if required.

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

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

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

15. No Representations. Sublessee hereby specifically covenants that all of the terms

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

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

17. Entry by Sublessor. Sublessor and its authorized partners and employees shall be permitted during the term of this Sublease to visit and inspect the Premises during normal working hours. However, in the event of an emergency requiring immediate admission, if Sublessee shall not be personally present to open and permit entry into the Premises, Sublessor or its agents may forcibly enter the same.

18. Default by Sublessee: Remedies.

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

(A) Any failure to pay Rent when due.

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

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

(D) Any abandonment of the Premises by Sublessee.

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

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

demand.

18.2 Remedies. In the event of any default or breach by Sublessee, Sublessor may at any time thereafter, in Sublessor's sole discretion, with 15 days advance written notice to Sublessee and without limiting Sublessor in the exercise of a right or remedy which Sublessor may have by reason of such default or breach do any one or more of the following:

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

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

(C) Pursue any other legal remedy now or hereafter available to Sublessor under the laws of judicial decision of the State of Florida.

19. Damage to Premises.

19.1 Damage to Structure of Premises. If the structure of the Premises, i.e. roof, foundation or exterior walls, shall be partially damaged by fire, storm or other casualty, repair shall be made by Sublessor with reasonable dispatch. In the event of the substantially total destruction of the structure of the Premises by fire or otherwise, or if the damage shall be so extensive that it cannot, in the opinion of Sublessor, be repaired within three months from the date of such damage, then at Sublessor's option the Rent shall be paid only up to the time of such destruction or damage and this Sublease and the term thereof shall thereupon cease, except that Sublessee shall be and continue to be liable for any destruction or damage caused or permitted by Sublessee. Notwithstanding the other provision of this Section, Sublessor shall not be obligated to incur any repair or

reconstruction expense for the structure of the Premises in excess of the proceeds of any insurance policy maintained by Sublessor payable to Sublessor for such expense. Sublessor shall not have obligation to repair or rebuild any of Sublessee's fixtures, equipment, tenant improvements or personal property and Sublessor shall not be liable for any loss or damage to any such property suffered by Sublessee. Notwithstanding the provisions of the Section entitled "Maintenance" and this Section, Sublessee shall pay the cost of repair and replacement due to damage or injury done to the structure of the Premises by Sublessee or Sublessee's agents, employees, contractors, licenses or invitees. Sublessee shall pay such amount to Sublessor upon demand as Additional Rent, plus interest at the maximum lawful rate from demand until payment

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

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

21. Insurance.

21.1 Liability Insurance. Sublessee shall, at its sole expense, obtain and keep in force and effect a policy of combined single limit, bodily injury and property damage insurance against any liability arising out of the conduct of Sublessee's business and the ownership, use, occupancy or maintenance of the Premises, and all areas appurtenant thereto, and the Marina. The policy shall insure performance by Sublessee of the indemnity provision of this Sublease and shall include premises/operations, product liability, independent contractors and personal injury liability coverages. Such insurance shall be a combined single limit policy in an amount not less than $1,000.000.00. Sublessor and Master Landlord must be included as additional insured with respect to this coverage.

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

mischief, special extended perils (all risk) and sprinkler leakage. Such policy shall be in the amount and on the terms reasonably required by Sublessor.

21.3 Worker's compensation and Employer Liability. Sublessee shall maintain workers compensation insurance for all Sublessee's employees who work on the Premises in compliance with state regulations. Worker's compensation insurance shall include, as applicable, Longshoreman Harbor Workers Act coverage and maritime law coverage. Sublessee shall maintain employer's liability insurance in an amount that is the greater of $100,000.00 or the amount required by applicable statutes.

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

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

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

any such claim, Sublessee shall, upon notice from the Indemnitee, defend the same at Sublessee's expense by counsel satisfactory to the Indemnitee. This Section shall survive termination of this Sublease.

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

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

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

24. Attorney's Fees. In the event of any action or proceeding brought by either party against the other under this Sublease, the non-prevailing party in any such action or proceeding shall be responsible for the reimbursement of all reasonable attorneys' fees and costs incurred by the prevailing party in such action or proceeding. The Sublessor shall be entitled to attorney's fees, costs and expenses incurred in the preparation and service of notices of default and consultation therewith, whether or not a legal action is subsequently commenced in connection with such default.

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

26. Notices. Communications relating to this Sublease shall be in writing and shall be

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

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

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

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

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

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

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

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

34. Construction of Improvements.

34.1 Tenant Improvements. Sublessee may, upon Sublessor's and Master Landlord's prior written approval, which may be withheld at Sublessor's or Master Landlord's discretion, construct or may commence to construct at Sublessee's expense all major improvements, repairs and renovations which Sublessee desires to make to the Premises ("Tenant Improvements"). Each year during the term of this Sublease, Sublessee shall be required to undertake and complete no less than $10,000.00 worth of Tenant Improvements, including capital improvements, to the restaurant.

34.2 General Construction Standard. All Tenant Improvements shall be built to Sublessor's and Master Landlord's satisfaction and in accordance with applicable building codes. The Tenant Improvements shall be constructed in good and workmanlike manner in accordance with all requirements of all governmental departments, boards, bureaus, officials and authorities having jurisdiction. All necessary permits for such construction

shall be obtained by Sublessee at Sublessee's sole expense. Sublessor shall use its best efforts to assist Sublessee in obtaining necessary permits for construction, but at no time shall Sublessor be expected nor required to incur any expense or cost in such efforts.

34.3 Design and Construction. Any Tenant Improvements shall be in conformance with the design and architectural parameters of the Marina, as determined by Sublessor and Master Landlord in Sublessor's and Master Landlord's discretion, including but not limited to, color, material, structure, theme and ambiance parameters.

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

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

34.6 Payment and Performance Bond. Lessee and Sublessee agree to provide a payment and performance bond for any construction related activities valued over $25,000.00 dollars pursuant to Florida Statutes Section 255.05. For projects which involve construction or rehabilitation work, the County requires the Lessee and Sublessee to provide the County with a Payment and Performance Bond ("Bond") in the full amount of the construction contract, naming the County as a dual obligee. For projects which involve construction or rehabilitation work on County-owned property, the County shall require, at least ten (10) days prior to the commencement of any construction work on the property, or the purchase and delivery of any materials, equipment or supplies for construction, a Bond that meets the requirements set forth in Florida Statutes, Section 255.05, which Bond shall be in the full amount of the construction contract and shall cover all costs of all of the improvements and construction work to be undertaken on

County-owned property and all contractors, subcontractors, or materials providers downstream from the developer, including but not limited to the General Contractor. The payment and performance bond shall name the developer as the principal and the County as a dual obligee. In lieu of the Lessee and Sublessee providing a Bond satisfactory under this section, the County may accept an alternative form of security permitted pursuant to Florida Statutes, Section 255.05(6) in an amount to be determined by the County, in its sole and absolute discretion along with a payment and performance bond in the full amount of the construction work that satisfies the provisions of Section 255.05, Florida Statutes.

34.7 Grease Trap. Sublessee agrees to, at its sole expense, obtain the required permits and maintain the grease trap(s) at the Premises.

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

36. Sublease Extension. Provided Sublessee has not been in default under the Sublease, at the end of the term of the Sublease, Sublessee shall have an option to extend the lease until the expiration of the initial base term of the Master Lease and Sublessor will negotiate in good faith to extend the term of the Sublease to expire upon the termination of the initial base term of the Master Lease, on terms that are substantially the same as the current lease.

37. Signage. Sublessee may be permitted to display signage on the Premises for the sole purpose of identifying its restaurant. Sublessee may also be permitted to display signage on or about the Marina, but such signage shall be for the sole purpose of providing directional information to patrons and may be limited at the Master Landlord's sole discretion. Any signage to be posted under this paragraph shall be approved in writing in advance of its display by Sublessor and Master Landlord. Nothing in this paragraph shall be construed to grant Sublessee rights greater than those allowed under Article 7 of the Miami-Dade County Charter as it may be amended and conform to the Sublease, Master Lease and all applicable laws and regulations.

38. Liquor license. Sublessor will make best efforts to continue the assignment of the existing liquor and tobacco license, as applicable, but Sublessor cannot warrant this continuance. Sublessee will diligently pursue the transfer or replacement of existing licenses to Sublessee's name but failure to accomplish this will not be a default of the Sublease, so long as same is diligently pursued and Sublease remains in compliance with all applicable laws and regulations during such time.

39. Management Duties. Sublessor and Sublessee acknowledge that Sublessor's

principals, Robert Gregory, ("Gregory") reputation is the primary reason and a material consideration for Sublessor's execution of this Sublease. Accordingly, Gregory agrees during the term of this Sublease to devote on behalf of Sublessee such time, skill and attention to the Premises, including the operation of the restaurant, as may be reasonably necessary to ensure the proper fulfillment of Sublessee's duties and obligations under this Sublease.

40. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

41. Radon Gas Notice. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over a period of time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

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

"SUBLESSOR"

33032 PARTNERS, LTD., a Florida limited partnership

By: 33032 Partners, Inc., a Florida corporation, its General Partner

By: _____
Name:
Title:
Date:

"SUBLESSEE"

OCEAN GRILL ENTERPRISES, LLC, a Florida limited liability company

By: _____
Name:
Title:
Date:

EXHIBIT A

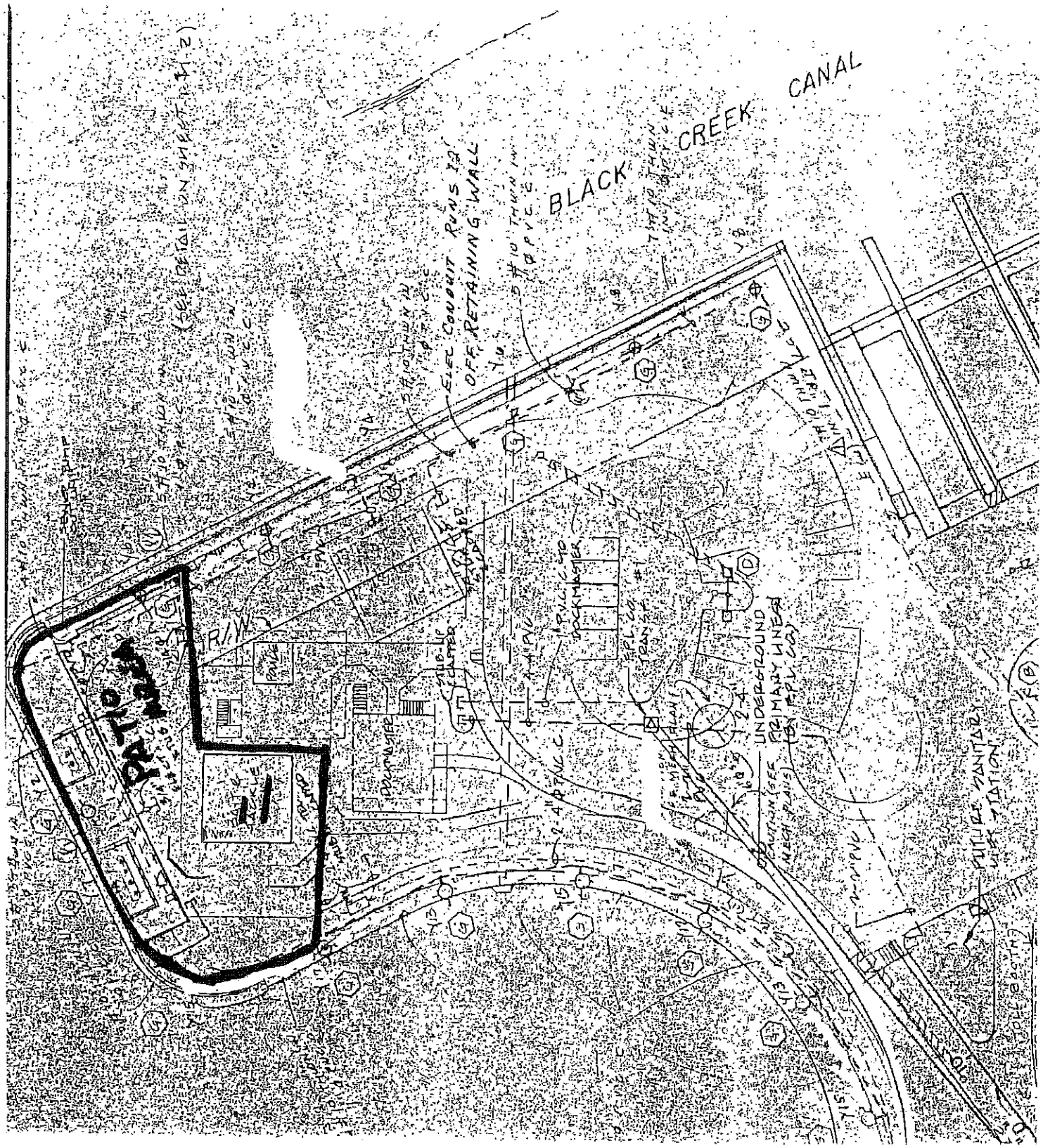
BLACK CREEK CANAL
ELEC CONDUIT RUNS 12
OFF RETAINING WALL
R/W
UNDERGROUND
PRIMARY LINES
DOCKMASTER
FUTURE SANITARY
LIFT STATION

EXHIBIT B

Black Point / Ocean Grill
Personal Property List
DESCRIPTION
2-Door, Reach-In Cooler
Aluminum Trough
Portable Speed Well
Hand, Sink, and Ice Well
Ice Bin & Speed Well
2-Door Wine Cooler
Barstools
Metal, High Top Stools
Metal, Dining Chairs
Metal, High Top Tables
Metal, 4 Top Tables
Rolling Racks
3-Bay Soup Well
6-foot freezers
6-foot prep table
3-door bay marie cooler
salad cooler
Alto Sham Over
Slicer
2-Door Oven
Portable Can Rack w/ Cut Board
small mixer
storage rack
stand up cooler with speed rack
2'x2' flat top grill
6-star burner
fryers
dishwasher
8'x8' walk in cooler
3-door freezer
2-door freezer
ice machine, large
ice machine
walk-in beer cooler
safe
ice-tea machine
coffee machine
Kitchen equipment, including, silverware, scoops, bowls, pots, sifters, trays, holders, etc...
shelving
ladders
scale
garbage cans
paper towel holders
telephones
fax machine
credit card machine
office supplies
computer
Bait cooler
50' LCD TV