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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: July 7, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(O)(1)(E)

From: Alina T. Hudak
County Manager

Subject: Recommendation for Approval to Award Contract for Matheson Hammock Park Boat Storage Facility

Resolution No. R-542-11

RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of this contract for the development and operation of a boat storage facility at Matheson Hammock Park.

CONTRACT NO: RFP635

CONTRACT TITLE: Matheson Hammock Park Boat Storage Facility

TERM: Twenty years with two, five-year options-to-renew

APPROVAL TO ADVERTISE: October 10, 2007

METHOD OF AWARD: Awarded to the responsive and responsible vendor whose offer results in the best value to the County. A full and open competitive Request for Proposals process was used.

PREVIOUS CONTRACT AMOUNT: There is no current contract for these services.

CONTRACT AMOUNT: $5 million estimated revenue to the County for the initial 20 year period.

If the County exercises the two, five-year options-to-renew, the total contract value will be $8.7 million in estimated revenue to the County.

USING/MANAGING AGENCY AND FUNDING SOURCE:

Department	Revenue	Funding Source	Contract Manager
Park and Recreation	$5,000,000	Revenue Generating	Jon Seaman
Total	**$5,000,000**		

The revenue allocation and funding source have been reviewed and approved by the Office of Strategic Business Management. There is no fiscal impact beyond what is stated in this award recommendation.

DPM CONTRACTING OFFICER: J.C. Romano

VENDORS RECOMMENDED FOR AWARD:

Vendor	Address	Principal
Aqua Marine Partners, LLC (Local vendor)	2890 NE 187 Street Aventura, FL 33180	Andrew Sturner

PERFORMANCE DATA: There are no known performance issues with the recommended firm.

COMPLIANCE DATA: There are no known compliance issues with the recommended firm.

VENDORS NOT RECOMMENDED FOR AWARD:

Proposer(s)	Reason for Not Recommending
Gables Harbour Marina, LLC	Evaluation Scores/Ranking
Marine Management, Inc.	
Rickenbacker Marina, Inc.	
Westrec Marina Management, Inc.	

REVIEW COMMITTEE DATE: Not Applicable

CONTRACT MEASURES: Pursuant to Administrative Order 3-41, contract measures do not apply to revenue producing contracts.

LIVING WAGE: The services being provided are not covered under the Living Wage Ordinance.

USER ACCESS PROGRAM: The User Access Program provision will not apply as this is a revenue generating contract.

LOCAL PREFERENCE: The Local Preference was applied in accordance with the Ordinance.

ESTIMATED CONTRACT COMMENCEMENT DATE: Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor.

BACKGROUND

Matheson Hammock Park (Matheson), located at 9610 Old Cutler Road, is owned by the County and operated by the Miami-Dade Park and Recreation Department (MDPR). Matheson is located within the City of Coral Gables and has been granted historic designation. MDPR has dedicated approximately 100,000 square feet of land at Matheson to build and operate a boat storage facility. The lessee will design and build the boat storage facility at no cost to the County. The lessee will also operate the

facility and pay monthly rent to the County, in addition to a share of the total gross receipts resulting from operations.

Advertisement of the solicitation was approved in October 2007. Issuance of the solicitation was delayed until June 2008 to obtain confirmation from the City of Coral Gables City Manager that the City had no objection with the County's plans to build a boat storage facility at the park. Five proposals were received. The evaluation process was completed in March 2009 following a comprehensive review by the Evaluation/Selection Committee. Negotiations with the highest ranked firm, Aqua Marina Partners, LLC (AMP), were approved to begin in July 2009. The negotiation process was lengthy, concluding in March 2011, as the County and AMP conducted detailed reviews of contractual provisions. Some of the negotiated achievements include:

1. Additional Boat Storage Rent
   Should the annual gross receipts of the boat storage operation surpass $3.2 million, the County will receive additional rent (revenue). AMP has projected the annual gross receipts to surpass this threshold after the fifth year of operation.

2. Total Project Cost Adjustment Revenue
   If savings are attained in the building of the boat storage facility, the County will share in those savings by receiving additional yearly revenue.

3. County Dockmaster's Office
   AMP has agreed to build a Dockmaster's Office (1,000 square feet) within the boat storage facility, and lease it to the County for a yearly rate of $1.

4. Revised Development Rider
   A revised Development Rider was agreed upon to provide clarity and transparency throughout the design and construction of this project.

5. Liquidated Damages
   The County will receive liquidated damages if AMP does not complete the boat storage facility within the time stipulated in the lease agreement.

6. Early Payment of County's Project Management Fee
   The County will receive a project management fee when the lease agreement becomes effective to offset the County's cost for monitoring this project.

7. Development Schedule
   A development schedule was agreed upon and incorporated into the contract.

This award recommendation is consistent with the County's goals for this project, and represents a most viable offer. The facility will provide dry storage for over 300 boats. In addition, the lessee will provide services such as stocking and fueling the boats for outings, cleaning boats, emergency towing within Biscayne Bay, and general boat maintenance. The boat storage facility is anticipated to be completed and operational within four years of contract execution.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 7, 2011

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

SUBJECT: Agenda Item No. 8(O)(1)(E)

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(O)(1)(E)
7-7-11

RESOLUTION NO. R-542-11

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT IN THE AMOUNT OF $5,000,000 WITH AQUA MARINE PARTNERS, LLC TO DEVELOP AND OPERATE A BOAT STORAGE FACILITY AT MATHESON HAMMOCK PARK, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A LEASE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN CONTRACT NO. RFP635

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 execution of a lease agreement in the amount of $5,000,000 with Aqua Marine Partners, LLC, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

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

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2011. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

Matheson Hammock Boat Storage Facility

Lease Agreement

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Matheson Hammock Boat Storage Facility

Contract No. RFP635

THIS LEASE AGREEMENT made and entered into as of this _____ day of _____, 2011 by and between Aqua Marine Partners, LLC, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 2890 NE 187th Street, 2nd Floor, Aventura, Florida 33180 (hereinafter referred to as the "Lessee" or "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County").

W I T N E S S E T H:

WHEREAS, the County owns the Matheson Hammock Park (the "Park") for the recreation and enjoyment of park patrons, which facilities are administered for the County by its Director of the Park and Recreation Department (the "Department") or designee; and,

WHEREAS, the Lessee has offered to develop and operate a Boat Storage Facility (the "Facility") at the Park in a manner that shall conform to the Scope of Services (Appendix A), Development Rider (Appendix B), Miami-Dade County's Request for Proposals (RFP) No. 635 and all associated addenda and attachments, incorporated herein by reference, and the requirements of this Lease Agreement; and,

WHEREAS, the Lessee has submitted a written proposal dated October 6, 2008, (hereinafter referred to as the "Lessee's Proposal") which is incorporated by reference herein; and,

WHEREAS, the Lessee's Proposal is recommended as being in the best interest of the County, and formed the basis for award of this Lease Agreement,

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

1. **Use**: The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County for the term defined herein, at the rate and upon the covenants and conditions as set forth herein a Lease Agreement of the site within Matheson Hammock Park more particularly described in Exhibit 1 hereto (the "Facility Site") to develop and operate the Facility at Matheson Hammock Park. Lessee shall use the Facility Site only for the use permitted. The Lessee shall not conduct any business nor provide any service nor sell any item or product without the prior written approval of the Department, and any sales by the Lessee of services or items not specifically authorized in writing by the Department shall constitute a default of this Lease Agreement. Lessee shall conduct its business at all times in accordance with this Lease Agreement.

1.1 **Relocation of Existing Uses:** Lessee shall be responsible for relocating existing boat storage trailers to New Trailer Storage Area as defined and described in Appendix B hereto.

2. **Operations:** Except when and to the extent that the Facility Site may be uninhabitable by reason of damage by fire or other casualty or Force Majeure event as identified in this Lease Agreement, Lessee shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Facility Site other than such minor portions thereof as are reasonably required for storage and office purposes. Such storage and office space shall only be used in connection with the business conducted by Lessee in the Facility. Lessee will have at the Facility Site adequately trained personnel for efficient service to customers. Lessee covenants to perform promptly all of the obligations of Lessee set forth in this Lease Agreement.

3. **Limitations on Use:** Subject to Lessee's right to use the Facility Site for the purposes specified in this Lease Agreement, Lessee shall not suffer or permit the Facility Site or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements set forth in this Lease Agreement; (ii) cause structural injury to the Facility, the Facility Site, or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Facility, the Facility Site, or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Facility or the proper

and economic cleaning of the Park or the proper and economic functioning of any other common service facility or common utility of the Facility or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Facility, the Facility Site or Park; or (vii) impair any of the Lessee's other obligations or any of Lessor's obligations under this Lease Agreement.

4. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Lessee's business in the Facility Site, or any part thereof, Lessee, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Lessee shall at all times comply with the terms and conditions of each license and permit.

5. **Non-exclusivity:** This Lease Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other concessionaires or others in other premises owned and operated by the County or from authorizing other concession services within the Park. The Lessee shall have no rights to any other location or concession that may be made available by the County.

6. **Proposal Incorporated:** The Lessee acknowledges that it submitted to the County Lessee's Proposal that was the basis for the award of this Lease Agreement and upon which the County has relied. Lessee's Proposal is hereby incorporated in its entirety and made a part of this Lease Agreement.

7. **Attachments:** The Appendices and Exhibits described or attached to this Lease Agreement, including but not limited to those listed below, are hereby incorporated in and made a part of this Lease Agreement:

Appendix A:	Scope of Services
Appendix B:	Development Rider
Exhibit 1:	Facility Site Map
Exhibit 2:	Development Schedule

8. **Property Description:** The Facility Site is located at 9610 Old Cutler Road, Coral Gables, FL 33156 as shown on Exhibit 1. Exhibit 1 contains an approximate rendering of the Facility Site.

Within ninety (90) days following the Effective Date of this Lease Agreement the Lessee shall at its cost and expense obtain a survey of the Facility Site with the boundaries shown in the attached rendering ("Survey") whereupon the rendering contained in Exhibit 1 shall be substituted for the Survey as the correct legal description of the leased Facility Site.

9. **Term:** The County hereby leases to the Lessee for a term of twenty (20) years (the "Term"), the Facility Site to develop and operate the Facility. The effective date of this Lease Agreement (the "Effective Date") is the date entered on the first page of this Lease Agreement.

10. **Option to Renew:** The County, at its sole option, may renew this Lease Agreement for one (1) additional ten (10) year period by delivering to the Lessee in writing notice of intent to renew the lease not later than thirty (30) days prior to the expiration of the Term. The County reserves the right to exercise its option to extend this Lease Agreement for up to one hundred-eighty (180) calendar days beyond the current contract period and will notify the Lessee in writing of the extension. This Lease Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Lessee, upon approval by the Board of County Commissioners.

11. **Initial Rent:** Lessee, in consideration of the use of the Facility Site does hereby covenant and agree to pay to the County without deduction or set off of any kind the sum of $1,500 (plus tax) per month as Initial Rent (hereinafter the "Initial Rent"). The obligation to pay the Initial Rent shall commence on the Effective Date of this Agreement and shall terminate upon the Date of Beneficial Occupancy, as defined herein.

12. **Guaranteed Monthly Rent**: Commencing immediately on the earlier of (i) the date on which substantial completion of the Facility has occurred and the appropriate code enforcement agency has issued a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) that enables the Lessee to occupy or utilize the Facility in a manner for its intended use; or (ii) the date on which the Lessee commences the use of any substantial portion of the Facility for its intended use (with or without a TCO or CO); all as determined in the sole reasonable discretion of the County (hereinafter referred to as the "Date of Beneficial Occupancy"), in consideration of the use

of the Facility Site, Lessee does hereby covenant and agree to pay to the County without deduction or set off of any kind the sum of $17,000 (plus tax) per month as Guaranteed Monthly Rent (hereinafter the "Guaranteed Monthly Rent"). The Guaranteed Monthly Rent shall be adjusted upward at the end of each Lease Agreement Year based on the Consumer Price Index (CPI) under the City of Miami Group, for All Urban Consumers, under Other Goods and Services.

13. **Percentage of Monthly Gross Receipts**: Commencing on the Date of Beneficial Occupancy, in addition to the Guaranteed Monthly Rent, Lessee agrees to pay to the County an amount equal to 1% (plus tax) of monthly Gross Receipts (hereinafter referred to as "Percentage Rent").

13.1 **Additional Boat Storage Rent**: In addition to Guaranteed Monthly Rent and Percentage Rent, each Lease Agreement Year in which Gross Receipts exceed $3.2 million, Lessee agrees to pay the County additional rent equal to that amount by which 8% of the portion of Gross Receipts generated solely by long and short-term rental of the boat slips (hereinafter the "Boat Storage Income") exceeds the Guaranteed Monthly Rent and the Percentage Rent paid by the Lessee during the Lease Agreement Year (hereinafter the "Additional Boat Storage Rent"). The Additional Boat Storage Rent, if any, shall be paid annually within thirty (30) days of the due date of the required Annual Written Statement pursuant to Paragraph 22(C) herein.

13.2 **Total Project Cost Adjustment:** Commencing on the Date of Beneficial Occupancy, the Lessee shall pay to the County on a yearly basis, in addition to the other rents provided for in this Lease Agreement, a Total Project Cost Adjustment. The amount of the Total Project Cost Adjustment shall be the difference between $48,323 and the Actual Cost Per Slip (as defined below) multiplied by $0.018256 and further multiplied by the number of slips which the Lessee has been authorized by all federal, state, and local governmental agencies, as applicable, to construct and use for purposes of boat storage, and which have been constructed, as required and approved by the County ("Authorized Slips"). The term "Actual Cost Per Slip" shall mean the actual line item costs incurred and paid by the Lessee, as evidenced by accounting records kept in accordance with Generally Accepted Accounting Principles, in obtaining development orders and permits, financing, and constructing the Facility, between the Effective Date of this Lease Agreement and

the Date of Beneficial Occupancy divided by the number of Authorized Slips. In calculating the Actual Cost Per Slip, the development fee, construction fee, and any other fees included in the Lessee's budget tied directly to performance shall be no greater than five percent (5%). The Actual Cost Per Slip shall include no home or job site overhead greater than five percent (5%). The Total Project Cost Adjustment, if any, shall be paid within ten (10) days of the Date of Beneficial Occupancy and within ten (10) days of every annual anniversary of the Date of Beneficial Occupancy thereafter.

13.3 **Total Payments:** The total payments due from the Lessee shall be the sum of (1) Initial Rent or Guaranteed Monthly Rent, as applicable; (2) Percentage Rent; (3) Additional Boat Storage Rent, if applicable; (4) Total Project Cost Adjustment, if applicable; and (5) any other Additional Rent and imposed taxes further described in this Lease Agreement, as applicable.

14. **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 7%) (herein after the "Sales and Use Tax") on the amounts payable to the County. This Sales and Use Tax shall be payable to the County, with the applicable rents and percentage fees, which in turn will remit same, less authorized handling deductions, to the State.

15. **Additional Taxes:** If at any time during the term of this Lease Agreement including any renewal or extension thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on rents or percentage fees, or other tax (except income tax), however described, is assessed against the County on account of the rent or percentage fees payable herein, such tax, charge, capital levy, or excise on rents or other taxes shall be deemed to constitute real estate taxes on the Facility for the purposes of this Paragraph and the Lessee shall be liable for payment thereof.

16. **Taxes on Lessee's Personal Property:** Lessee shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Facility Site by Lessee.

17. **Late Payment Charge:** In the event that the Lessee fails to make any payments on time, as

required to be paid under the provisions of this Lease Agreement, a penalty at the rate of 1.5% per month, or any portion of a month, shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the County to require payment of such late payment charge and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Lease Agreement, or to pursue other remedies provided by law.

18. **Application of Payments**: Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied to the Initial Rent, if applicable, then proportionately to the Guaranteed Monthly Rent and Percentage Rent and the associated Sales and Use Tax. Any remaining balance in the payment will be applied to any other balance due.

19. **Worthless Check or Draft:** In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Lease Agreement, the Lessee shall incur and pay a service charge of $10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment is to be made within not more than five (5) days from written notice of such default. Further, in such event, the Department may require that future payments pursuant to this Lease Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of a dishonored check will, at the County's option, constitute a default allowing termination.

20. **Payment:** The Initial Rent by Lessee to the County shall be payable on the first day of each month commencing on the Effective Date through the last day of the month the Date of Beneficial Occupancy occurs. The Guaranteed Monthly Rent by Lessee to the County shall be payable on the first day of each month after the Date of Beneficial Occupancy through the Term of this Lease Agreement. Such payments, as well as other amounts payable by Lessee to the County under the Terms of this Lease Agreement, all of which shall be deemed to be Additional Rent for the purposes of collection only herein, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided. Percentage Rent shall be paid

by the Lessee to the County on or before the 10th day following the end of each month during the term of this Lease Agreement and on or before the 10th day of the month following the expiration or earlier termination of the Lease Agreement. All rental and percentage fees provided for in this Lease Agreement shall be paid or mailed to:

Miami-Dade Park and Recreation Department
Contract Management Section
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128

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

- **Accord and Satisfaction:** No payment by Lessee or receipt by County of a lesser amount than any payment of Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent then due and payable. No endorsement or statement on any check or any letter accompanying any check or payment for Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent shall be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent or pursue any other remedy provided in this Lease Agreement, at law or in equity.

21. **Gross Receipts:**

A. Lease Agreement Year Defined: "Lease Agreement Year" means a twelve-month period beginning on the Effective Date and ending twelve months thereafter.

B. Gross Receipts Defined: "Gross Receipts" means all Boat Storage Income and receipts from other space, the sale of services or merchandise by Lessee, and sub-lessee(s) and sub-contractor(s) of Lessee (including concessionaires of Lessee, sub-concessionaires and contract employees), in, upon or from the Facility Site. Gross Receipts includes such sales as shall in good faith be credited by Lessee, and its sub-lessee(s) and sub-contractor(s) in the regular course of its or their business to

personnel employed at the time of sale at the Facility Site, including mail and telephone orders received at the Facility Site and off-premises sales. Gross Receipts shall not be deemed to mean or include the following: amounts credited by Lessee or its sub-lessee(s) or sub-contractor(s) for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Lessee's trade fixtures, operating equipment or other property used by Lessee or its sub-lessee(s) or sub-contractor(s) in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise have accrued or been served, shipped or delivered or when charged against the Lessee, permittee or purchaser on the books of Lessee, or its sub-lessee(s) or sub-contractor(s), whichever of such events shall first occur.

C. Lessee's Certification of Receipts: Lessee shall submit to County on or before the 10th day following the end of each month during the term of this Lease Agreement and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by Lessee and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Lessee shall submit to County on or before the 60th day following the end of each Lease Agreement Year an annual written statement, signed by Owner, CEO, or Financial Officer of the Lessee and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Lease Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant (hereinafter "Annual Written Statement"). The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

D. Examination of Lessee's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Rent, Additional Boat Storage Rent or Total Project Cost Adjustment (collectively the "Variable Rents") payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Lessee's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Lessee's business. All information obtained by County or its authorized representatives from Lessee's books and records shall be kept confidential by County and all such representatives except in connection

with any mortgage or assignment of this Lease Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Lessee's Receipts Records: For the purpose of computing and verifying the Variable Rents due hereunder, Lessee shall prepare and keep, for a period of not less than three (3) years following the end of each Lease Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all rentals, sales and other pertinent transactions by Lessee. Lessee shall record at the time of sale each receipt from rentals, sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Lessee shall keep, for at least three (3) years following the end of each Lease Agreement Year, all pertinent original rental, permit and sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail orders; (iv) telephone orders; (v) settlement report sheets of transactions with concessionaires and sub-lessees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Lessee's Gross Receipts.

The acceptance by County of payment or certification of receipt of Variable Rents shall be without prejudice and shall in no case constitute a waiver of County's right to examination of Lessee's books and records of its Gross Receipts and inventories of merchandise.

F. Audit of Lessee's Business Affairs and Records: County shall have the right to cause, upon five (5) day written notice to Lessee, a complete audit to be made by a designated external auditing firm, or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County. Lessee shall make all such records available for said examination at the Facility or at some other mutually agreeable location. If the result of such audit shows that Lessee's statement of Gross Receipts for any period has been understated, or reported actual costs for purposes of Total Project Cost Adjustment has been overstated, Lessee shall pay

County the amount due. If such understatement or overstatement, as applicable, is three percent (3%) or more, Lessee shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as rent. A report of the findings of said auditing or accounting firm shall be binding and conclusive upon County and Lessee. The furnishing by Lessee of any grossly inaccurate statement shall constitute a default of this Lease Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County, except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Lease Agreement for financing purposes, or if subject to the requirements of the Florida Public Records Act.

G. If Lessee fails to record, maintain, or make available sales supporting documentation as specified above, Lessee may be deemed by the County to be in default of this Lease Agreement.

22. **Security Deposit:** Within thirty (30) calendar days from the Effective Date of this Lease Agreement, Lessee shall furnish to the Department a security deposit in cash equal to three (3) months Guaranteed Monthly Rent redeemable at the end of the Lease Agreement subject to the terms set forth below (hereinafter a "Security Deposit").

The Lessee may, in lieu of a Security Deposit with the County, provide a performance bond or irrevocable letter of credit in the same amount (hereinafter respectively the "Performance Bond" or Letter of Credit", and along with Security Deposit collectively referred to as the "Security"). This Security will be conditioned on the full and faithful performance of all covenants of this Lease Agreement.

In the event that Lessee abandons performance or fails to perform as required, the County will execute on the Performance Bond, draw upon the irrevocable Letter of Credit, or retain the Security Deposit, whichever is the case, and Lessee will be responsible for the balance of the debt, if any, that is owed. Additionally, if the County must draw upon any portion of the form of Security provided, Lessee hereby agrees to restore the security to its original amount within seven (7) calendar days of receiving notice by the County that the Security was drawn upon.

24. **County Approval:** The Lessee agrees that it will obtain prior written approval from the Department in all of the following matters:

    A. Services, pricing, activities, signage and graphics, and changes thereto.

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

    C. Aesthetics of the Facility.

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

    E. Hours of Operation and changes thereto.

    F. Uniforms to be used by employees which shall be consistent with or better than those normally used in similar professionally operated facilities.

    G. The General Manager of the Facility as set forth in Section 30 below.

    Further it is understood by the Lessee that should any of the above items be disapproved, Lessee may offer alternative solutions. The County reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in this paragraph the County deems in need of change, despite previous approval of same.

25. **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 County to demand his or her removal from duties at the Facility Site. Neither Lessee nor its employees will be considered agents of the County.

26. **Hours of Operation:** The Facility shall be open for business seven (7) days a week during those hours approved by the County. Sufficient staff will be available to provide outstanding service. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.

27. **Pricing:** Lessee shall maintain the pricing schedule for goods and services as stated Appendix A, Scope of Services, Section 7 and as approved by the Department. For any goods or services price not established in Appendix A, Scope of Services, Section 7 or if the Lessee wishes to change its prices for goods and services, Lessee will provide to the Department a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or

disapproval. Pricing for special events or services shall be expeditiously approved by the Department.

28. **Personnel**: The Lessee shall provide the Department with the name and telephone number of a management person of the Lessee who will be on call, at all times, for emergencies or other matters related to the operations under this Lease Agreement. The Lessee shall ensure that all its personnel performing services under this Lease Agreement are courteous and cooperative and present a neat, clean and professional appearance at all times. The Lessee shall ensure that all employees having public contact are able to understand and communicate in spoken English.

29. **Signs**: The nature, size, shape and installation of Lessee's business signs within the Facility or in, on, or adjacent to the Facility or Park must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Lessee at the termination of this Lease Agreement and any damage or unsightly condition caused due to said signs shall be corrected or repaired by the Lessee.

30. **General Manager**: The Lessee shall employ a qualified full-time on-site manager having experience in the management of this type of operation (the "General Manager"), who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Lessee under this Lease Agreement and to accept service of all notices provided for herein. The employment of any person as General Manager shall at all times be subject to the reasonable approval of the County.

31. **Quality of Lessee's Service**: 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 ensure proper conduct, demeanor and appearance of its officers, members, employees, agents, representatives. Upon objection of the County 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 Facility and Facility Site, 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 Lease Agreement or its termination in any manner, shall deliver said Facility and Facility Site to the County in the same condition as at the commencement of this Lease Agreement, subject to ordinary wear and tear with the exception of loss by fire or other casualty.

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

It is expressly understood and agreed that the operations shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the Facility Site. The Lessee agrees that a determination by the County will be accepted as final in evaluating whether Lessee's activities infringe on the rights of others and that Lessee will fully comply with any decisions on this matter.

32. **Monitoring:** The Department shall have the right, without limitation, to monitor and test the quality of services of the Lessee, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.

33. **Service Access Provided by County:** The County shall provide access to the following:

    A. Electrical as existing.

    B. Water facilities as existing.

    C. Sewage collection facilities as existing.

34. **Equipment and Services Provided by Lessee:** The Lessee, at its sole cost, shall provide at the Facility:

    A. Janitorial service within the Facility and Facility Site.

    The Lessee shall keep the Facility Site, Facility, and equipment clean at all times. If the Facility Site, Facility and equipment are not kept clean in the opinion of the Department, the Lessee will be so advised and if corrective action if not immediately taken, the Department will cause the same to be cleaned and the Lessee shall assume responsibility and liability for

reimbursing the County for such cleaning.

B. Pest extermination.

The Lessee shall follow the County's Integrated Pest Management guidelines.

35. **Equipment Installed by Lessee:** The Lessee shall furnish and install all furnishings, fixtures and equipment, including but not limited to all lighting, necessary for the operation of the Facility and Facility Site. All furnishings, fixtures and equipment acquired for the Facility and Facility Site shall be of a high quality as good as or better than that found at similar facilities. The County shall approve all furnishings, fixtures and equipment for the Facility and Facility Site.

Any furnishings, fixtures, equipment, signage and advertising installed by the Lessee shall be in compliance with Article 7 of the Home Rule Charter and in keeping with the appropriate standards of decor at the Park. Following the installation of any additional furnishings, fixtures, equipment and improvements, Lessee shall provide to the County a statement setting forth the cost of such furnishings, fixtures, equipment or improvements and the date upon which the installation of such furnishings, fixtures, equipment and improvements was completed.

Lessee agrees that all new furnishings, fixtures, equipment and improvements provided shall meet the requirements of all applicable building, zoning, safety, fire, pollution and other related codes. Lessee shall not alter or modify any portion of the Park, the Facility, the Facility Site or any of the improvements constructed therein without first obtaining written approval from the County.

36. **Security and Protection:** Commencing with the Date of Delivery of the Facility Site, the Lessee acknowledges and accepts full responsibility for the security and protection of the Facility and the Facility Site and of Lessee's furnishings, fixtures, equipment, other personal property, and cash on-site. The County makes no warranties as to any obligation to provide security for the Facility, the Facility Site, or Park, outside of standard security measures supplied by the County in general. Lessee's security for the Facility is subject to the County's written approval.

37. **Hurricane Preparedness:** The Lessee shall follow the County's emergency evacuation and hurricane plan as set forth for the Facility, Facility Site, and Park.

38. **Maintenance Responsibilities of Lessee, Appearance of Facility; Commencement of**

Obligations with Respect to the Facility:

38.1. **Maintenance and Appearance of the Facility**. Commencing with the Date of Delivery of the Facility Site, Lessee shall, at its sole cost and expense, keep and maintain the Facility and Facility Site in a clean and good condition. The provision of janitorial services and all interior maintenance within the Facility are the sole and exclusive responsibility of the Lessee. Upon failure of the Lessee to maintain the Facility and Facility Site as required in this Paragraph, the Department may, after fifteen (15) calendar days written notice to the Lessee, enter upon the Facility and Facility Site and perform all cleaning, maintenance and repairs which may be necessary. The cost thereof, plus 25% for administrative costs, shall constitute Additional Rent, and shall be billed to and paid by the Lessee.

38.2. **Transfer of Obligations**. County shall retain full responsibility for the physical condition, security, and all general maintenance of the Facility and Facility Site up until the Date of Delivery of the Facility Site. Responsibilities of Lessee with respect to the physical condition, security and all general maintenance of the Facility and the Facility Site, as set forth elsewhere in this Lease Agreement, shall not commence until the Date of Delivery of the Facility Site.

39. **Utility Services**: The County has caused all necessary utility lines and services to be brought to the Facility and Facility Site. Lessee shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Park as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Unacceptable load or burden is reached when determined by the governing regulatory agencies or public utilities (Department of Environmental Resources Management, Water and Sewer Department, Building, Zoning, Florida Power and Light, etc.) that current capacity is or will be exceeded by the new development, for the common use of the utility or service. Depending upon the determination of the respective utility or agency, the Lessee shall be responsible for the cost to mitigate the incremental overburden or cause to bring in new service as required.

40. **Payment of Utility Services:** Lessee shall pay for all charges for utility service used or consumed in or upon the Facility Site including, but not limited to electricity, gas, garbage collection and water and sewer charges. Lessee shall pay the actual cost thereof, without addition or surcharge by the County.

41. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Lessee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be performed with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Lessee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of rent or other charges, nor damages, shall be claimed by Lessee by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Lease Agreement or any of Lessee's obligations hereunder be affected or reduced thereby.

42. **Damages:** Lessee shall repair all damages to the Facility, Facility Site, or Park caused by the Lessee, its employees, agents, or independent contractors, including any damages cause by placing an unacceptable load or burden in the utility lines of the Park.

43. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of the Facility and Facility Site, including 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 make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Lessee is operating in compliance with the terms and provisions of this Lease Agreement.

44. **Right of Entry:** The County shall have the right to enter upon the Facility and Facility Site at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Facility and Facility Site as the County deems necessary, but the County assumes no obligation to make repairs in the Facility or Facility Site other than those expressly provided for in this Lease Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Lessee and that the County will diligently proceed therewith to completion. The County or the County's agents shall also have the right to enter upon the Facility and Facility Site at reasonable times to show them to actual or prospective mortgagees, tenants, or Lessees of the Park. During the one hundred and eighty (180) days prior to the expiration of the term of this Lease Agreement, the County may show the Facility and Facility Site to prospective tenants. If, during the last ninety (90) days of the Term of this Lease Agreement, Lessee shall have removed all or substantially all of Lessee's property there from, the County may immediately enter, alter, renovate, and redecorate the Facility and Facility Site without elimination or abatement of rent or other compensation and such action shall have no effect upon this Lease Agreement.

45. **Quiet Enjoyment of Property:** The County covenants and agrees that so long as no default exists in the performance of Lessee's covenants and this Lease Agreement, Lessee may peaceably and quietly hold and enjoy the Facility, Facility Site and all parts thereof for the Lease Agreement term, free from eviction or disturbance by the County or any person claiming under, by, or through the County.

46. **Damage or Destruction of Facility or Facility Site:** If either the Facility, or Facility Site, is partially damaged, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by the Lessee at its own cost and expense and no pro-rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of the Lessee's business interruption, shall be made. If the damage shall be so extensive as to render such Facility, or Facility Site, or Park unusable for the purposes intended, but capable of being repaired within

thirty calendar (30) days, the damage shall be repaired with due diligence by the Lessee 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 Guaranteed Monthly Rent.

In the event the Facility is completely destroyed or so damaged that it will remain unusable for thirty calendar (30) days or more, the Lessee and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Guaranteed Monthly Rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Lease Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the Facility and Facility Site to a clean, neat condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the premises in this Lease Agreement, the Lessee may reconstruct the premises at its own cost without the cessation or termination of the Lease Agreement as indicated above.

47. **County's Repair, Facility Repairs, Alterations and Additions by the County**: The County, as its responsibility, and at its expense (except if the damage is caused by Lessee), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the grounds and structures in the Park, excluding the Facility Site and Facility. There shall be no allowance to Lessee for a diminution of rental value for interruption of business and no liability on the part of the County by reason of inconvenience, annoyance, or injury to business arising from the County, Lessee (except as provided elsewhere herein) or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Park, or to fixtures, appurtenances, or equipment thereof. The County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Facility and Facility Site under this Lease 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 by the County and where not otherwise indemnified by the Lessee, subject

to the limitations of Section 768.28, Florida Statutes. 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 Facility and Facility Site, for short-term disruption of one week or less to Lessee's business where adequate accommodations can be made to minimize the injury to Lessee's business. If the Lessee's business is interrupted for more than one week, a pro rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of such interruption shall be made.

48. **Diminution for County's Repair:** Except as elsewhere specifically provided in this Lease Agreement, there shall be no allowance to Lessee for a diminution of rental value and no liability on the part of the County by reason of inconvenience, annoyance or interference with Lessee's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Facility, the Facility Site, the Park or the building or buildings contained within the Park, or in or to fixtures, appurtenances or equipment thereof. The County shall exercise reasonable diligence in performing such work so that its interference with Lessee's use of the Facility is as minimal as reasonably possible.

49. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Lease Agreement governing the use of the Facility, commencing on the Date of Delivery of the Facility Site Lessee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the Facility Site.

The County shall provide authorization for the Lessee and its agents, consultants and contractors to, immediately upon the Effective Date, enter upon the Facility Site in order to perform various tests and studies of the Facility Site and other pre-construction work as contemplated in this Lease Agreement. Prior to entering the Facility Site, the Lessee shall provide the County evidence of the insurance required in Section 54 below. The Lessee hereby agrees to indemnify and save the County harmless for personal injury or property damage incurred in connection with any of these pre-construction activities, and agrees to conduct the same in a manner which does not unreasonable hinder or obstruct the objectives of the park.

50. **Assignment, Subletting, and Successors in Interest:**

A. Lessee shall not assign, transfer, pledge nor otherwise encumber this Lease Agreement, nor any portion thereof, nor any property associated with this Lease Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Lease Agreement. It is agreed that all terms and conditions of this Lease Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

B. Lessee shall not enter into any sub-lease or sub-contract for services required to be provided under this Lease Agreement without prior written approval of the County. Unapproved sub-letting or sub-contracting shall be grounds for immediate termination of this Lease Agreement. All terms and conditions of this Lease Agreement shall extend to, be binding on, and be included in any sub-lease or sub-contract for services required to be provided under this Lease Agreement, including Percentage Rent as defined in this Lease Agreement. Lessee shall be liable for acts and omissions by any sub-lessee or sub-contractor affecting this Lease Agreement. The County reserves the right to directly terminate (and evict or pursue any applicable remedy) any sub-lessee of the Lessee for any cause for which Lessee may be terminated.

Any sub-lease agreement for Lease Agreement services must be made available and accounted for through the Lessee so as to provide seamless service to the public as if provided directly by the Lessee.

51. **Leasehold Mortgage:**

A. Provided Lessee is not otherwise in default of this Lease Agreement at such time, Lessee shall have the right to mortgage its interest in this Lease Agreement ("Leasehold Mortgage") provided that any such mortgage shall be subject to the provisions of this Lease Agreement. If Lessee shall have executed and delivered a Leasehold Mortgage and the holder thereof ("Leasehold Mortgagee") shall have notified the County to such effect giving its name and address:

(1) The County shall, in the manner provided for herein for the giving of notices, give notice to such Leasehold Mortgagee of each notice of default given to Lessee under this Lease.

(2) Such Leasehold Mortgagee shall have the right, for a period of thirty (30) days more than is given to Lessee, to remedy or cause to be remedied any default which is the basis of a notice and the County shall accept performance by such Leasehold Mortgagee as performance by Lessee.

(3) In case of default by Lessee under this Lease Agreement, other than a default in the payment of money or a default susceptible of being cured by the payment of a sum of money, the County shall take no action to effect a termination of this Lease Agreement by service of a notice or otherwise, without first giving to such Leasehold Mortgagee prior written notice and such time as the Leasehold Mortgagee reasonably requires to cure such default (provided there is continued payment to the County for rent and percentage fees due and continued operation and services at the Facility). Such time shall not exceed one (1) year within which the Leasehold Mortgagee will either:

(i) obtain possession of the Facility Site and the Facility (including possession by a receiver) and cure such default when such Leasehold Mortgagee has either obtained possession of the Facility Site and the Facility or has the right and ability to cure same (acting reasonably); or

(ii) institute and complete foreclosure proceedings or otherwise acquire Lessee's leasehold estate under this Lease Agreement and cure upon obtaining possession.

Subsections (i) and (ii) above are conditioned upon the following:

(a) The Leasehold Mortgagee shall not be an Affiliate of Lessee.

(b) The Leasehold Mortgagee, within the thirty (30) day period referred to in subdivision 2 above, shall:

(i) notify the County of its election to proceed with due diligence promptly to acquire possession of the Facility Site and the Facility or to foreclose the Leasehold Mortgage or otherwise to extinguish Lessee's interest in this Lease;

(ii) deliver to County an instrument in writing duly executed and acknowledged wherein the holder of the Leasehold Mortgage agrees that

during the period that such holder shall be in possession of the Facility Site and the Facility and/or during the pendency of any such foreclosure or other proceedings (which shall be prosecuted diligently) and until the interest of Lessee in this Lease Agreement shall terminate, as the case may be, Leasehold Mortgagee shall operate the facility on an uninterrupted basis through a manager satisfactory to the County and will pay or cause to be paid to the County all Guaranteed Monthly Rent and Percentage Rent and other sums then due (including past due) and from time to time becoming due under this Lease Agreement; and

(iii) if delivery of possession of the Facility Site and the Facility shall be made to such Leasehold Mortgagee (or to its nominee, as approved by the County and such approval shall not be unreasonably withheld), whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all the covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of possession, including, without limitation, the continuous operation of the Facility at all times through a manager satisfactory to the County.

B. The County, without prior written consent of the Leasehold Mortgagee, shall not consent to or accept any cancellation, termination or surrender of this Lease Agreement, or amend this Lease Agreement or otherwise materially amend or modify this Lease Agreement in a way that would materially affect the rights of the Leasehold Mortgagee under this Section of the Lease Agreement. Additionally, in the event that the Lease Agreement is terminated by result of any action (including rejection of the Lease Agreement in any bankruptcy proceeding) other than as provided for herein, and if Leasehold Mortgagee shall not have been provided with the opportunity to cure a default and acquire the Lessee's leasehold interest in accordance with subdivisions (2) or (3) above, then in that event the County shall give Leasehold Mortgagee notice of such event and Leasehold Mortgagee shall have thirty (30) days from its receipt of

such notice in which to enter in to a new lease agreement with the County on the same terms and conditions of this Lease Agreement, for a term which is co-terminus with the Term of this Lease Agreement.

C. The County shall, from time to time, upon reasonable written request, provide Leasehold Mortgagee with estoppel information as to the status of this Lease Agreement.

D. Lessee shall provide true copies of intended notes and Leasehold Mortgages to the County for review and approval by the County prior to closing of such instruments. Any such intended notes and Leasehold Mortgages shall be subordinate to the County's rights, including but not limited to rents, issues and profits from the leasehold estate. Upon request by the Lessee or Leasehold Mortgagee, the County shall execute a non-disturbance agreement on a form to be provided by the Leasehold Mortgagee, which form shall be subject to this Lease Agreement, provided that the County first approves of such form. Any approvals required of the County by this subsection 51(D) shall not be unreasonably withheld or delayed by the County.

52. **Ownership of Lessee:** The ownership of the Lessee is very important to the County. Therefore, the County reserves the right to terminate this Lease Agreement at any time if more than 10% of the ownership of the Lessee has not been specifically approved by the County. The County shall have the right to 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 County an accurate list of all owners of the Lessee, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. If Lessee's stock is listed on a major stock exchange, Lessee may be wholly or partially exempted from the list requirement of this Paragraph at the discretion of the County.

53. **County's Property Insurance:** Any insurance the County may maintain shall not cover the Facility Site, the Facility or 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 or Facility Site which would increase the fire or other property or

casualty insurance rate on the Park or the facilities 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 Park or facilities therein 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.

54. **Lessee's Insurance:** 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 and must be kept in full force throughout the applicable stage (generally "Certificates of Insurance").

Pre-Construction

Upon County's notification, and no later than fifteen (15) calendar days after Board of County Commission approval of this Lease Agreement, the Lessee shall furnish to the Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

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

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 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.**

3. 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 combined single limit per occurrence for bodily injury and property damage.

4. Environmental Liability in an amount not less than $1,000,000. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

Design Stage

Upon County's notification, and in no event later than submittal of Conceptual Plans, as set forth in the Development Rider, the Lessee shall provide to the County Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. 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.

Construction Phase

No later than fifteen (15) calendar days after issuance of NTP-1, as defined in the Development Rider, the Lessee shall provide to the County Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

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

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 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.**

3. 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 combined single limit per occurrence for bodily injury and property damage.

Operation Phase

Upon Date of Beneficial Occupancy and prior to operation of the Facility, the Lessee shall provide to the County Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

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

2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 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.**

3. 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 combined single limit per occurrence for bodily injury and property damage.

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

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

6. Property Insurance on an "All Risk" basis. **Miami-Dade County must be shown as a named insured.**

For all certificates in which Miami-Dade County must be shown as an additional insured with respect to the coverage, the mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance. Miami-Dade County contract number and title must appear on each certificate of insurance.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which 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, 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.

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 Lease Agreement.

The Lessee shall provide insurance documents within fifteen (15) calendar days after requested by the County. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Lease Agreement, the Lessee shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Lease Agreement within twenty (20) calendar days after requested by the County, the Lessee shall be in Default of the contractual terms and condition and award of the contract may be rescinded, unless such time frame for submission has been extended by the County.

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 contractual period; including any and all option years that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, 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 shall suspend the contract 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 this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this Lease Agreement.

The Department reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to the Lessee.

55. **Release and 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 Lease Agreement by the Lessee or its employees, agents, servants, partners principals or sub-lessees and 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 Lease Agreement 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.

56. **Liability for Damage or Injury:** The County shall not be liable for damage or injury which may be sustained by any party or persons at the Facility other than the damage or injury solely caused by the negligence or intentional actions of the County, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.

57. **Termination by County:** The occurrence of any of the following may cause this Lease Agreement to be terminated by the County upon the terms and conditions also set forth below:

A. Automatic Termination:

i. Institution of proceedings in voluntary bankruptcy or reorganization by the Lessee.

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

iii. Assignment by Lessee for the benefit of creditors.

iv. Abandonment or discontinuation during the Design Phase for a period of 30 days or more.

v. Abandonment of work during the Construction Phase for a period of 30 days or more.

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

B. Termination after seven (7) calendar days written notice by the County either by posting on

or at the Facility and by certified or registered mail to any known address of Lessee set forth in this Lease Agreement hereof for doing any of the following:

i. 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 seven (7) calendar day period following mailing of the written notice.

ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice. Unless such repair cannot be completed within 7 days, and then in such case, the County may allow additional time to complete such repairs as reasonably possible.

C. Termination after fourteen (14) calendar days from receipt by Lessee of written notice having either been posted on or at the Facility or by certified or registered mail to the address of the Lessee set forth in this Lease Agreement:

i. Non-performance of any covenant of this Lease Agreement other than non-payment of rent or percentage fees and others listed in A and B above, and failure of the Lessee to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

ii. A final determination in a court of law in favor of the County in litigation instituted by the Lessee against the County or brought by the County against Lessee.

iii. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.

iv. Unapproved change of ownership interest in Lessee

v. Failure to submit the ownership list within 24 hours upon the request of the County.

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

D. Revenue Control and Audit Defaults: The inability or failure of the Lessee to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Lease Agreement shall constitute a non-

curable default and in such event the County shall have the right to terminate this Lease Agreement upon seven (7) calendar days written notice to the Lessee. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this Lease Agreement.

E. Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has repetitively defaulted four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, regardless of whether the Lessee has cured each individual condition of breach or default as provided herein, the Lessee may be determined by the County to be an "habitual violator". At the time that such determination is made, the County shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Lease Agreement. In the event of any such subsequent breach or default, County may cancel this Lease Agreement upon the giving of written notice of termination to the Lessee, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Lessee shall discontinue its operations at the Facility, and proceed to remove all its personal property in accordance with this Lease Agreement.

F. Permits: If the Lessee has been unable to acquire the permits in accordance with the permit requirements in the Development Rider, Section I (E) Permits, and as provided in Paragraph 71 herein, the County shall have the right to terminate this Lease Agreement.

In the event that the County terminates this Lease Agreement by operation of any of the

provisions as stated in this Lease Agreement, then in addition to other rights and remedies available to the County under the law, the County may accelerate the rental payments under this Lease Agreement, whereupon the entire balance owed by the Lessee under this Lease Agreement shall become immediately due and payable without further notice or demand.

Notwithstanding the foregoing, prior to the issuance of Temporary Certificate of Occupancy, acceleration of rental payments shall not include any rental payments other than Initial Rent and Sales and Use Tax, as identified in this Lease Agreement.

58. **Termination by Lessee:** Lessee shall have the right upon thirty (30) calendar days from receipt of written notice to the County by certified or registered mail to the address set forth in this Lease Agreement to terminate this Lease Agreement at any time after the occurrence of one or more of the following events:

A. A breach by the County of any of the terms, covenants or conditions contained in this Lease 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.

B. 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 Park, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations for a period of ninety (90) calendar days or more.

C. Denial and/or approval of any development order, on or before the end of the Zoning Approval Process, as described in the Development Rider, and/or permit which has a material negative effect on the size and scope of the building as included in the Lessee's Proposal and approved by County in Conceptual Plans, pursuant to the Development Rider.

D. Failure to receive, within eighteen (18) months after the Effective Date, any Zoning Approval for the use of the upland portion of the Facility Site, or within thirty (30) months after the Effective Date, any and all development orders and/or permits from any federal, state, county, or municipal body of competent jurisdiction, which such failure makes the

performance of Lessee's obligations under this Lease Agreement impracticable or impossible.

59. **Surrender of Facility and Facility Site:** At the expiration or earlier termination of this Lease Agreement, Lessee shall peaceably surrender the Facility and Facility Site in as good a condition as the Facility Site and Facility were on the Effective Date and Date of Beneficial Occupancy of this Lease Agreement, respectively, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Lessee shall deliver all keys for the Facility and Facility Site to the County at the place then fixed for the payment of rent, and shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the Facility and Facility Site. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Lessee's property or trade fixtures into or out of the Facility and Facility Site. Lessee's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of this Lease Agreement.

60. **New Construction**: The Department shall approve all construction drawings and construction, all installation and all use of the Facility. Lessee shall bear all costs associated with such construction, installation and use. Lessee shall complete all improvements pursuant to the design and construction defined in Lessee's Proposal and as approved by the County. All improvements shall become the property of the County upon termination or expiration of the Lease Agreement. All development and construction activities must be accomplished, and completed, in accordance with the milestones set forth in the attached Development Schedule. All construction shall be accomplished in accordance with the Development Rider.

61. **Termination of Contract**: Following the expiration or termination of this Lease Agreement the Lessee, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Lease Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the County 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 during or

after termination of this Lease Agreement. The County shall have the senior interest in the Lessee's personal property. Lessee shall not remove any equipment, supplies in bulk, or fixtures within the Facility at any time without pre-approval in writing from the County. 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 Lease Agreement that all furnishings and equipment purchased or leased by the 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 Lease Agreement and the removal of all personal property by Lessee, the Lessee shall deliver Facility and Facility Site to the County in the condition set forth in this Lease Agreement.

62. **Holding Over:** If Lessee remains in possession of the Facility after the expiration 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 an 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.

63. **Lien:** The County shall have a lien upon all personal property of the Lessee on the Facility to secure the payment to the County of any unpaid money accruing to the County under the terms of this Lease Agreement.

64. **Limiting Legislative or Judicial Action**: In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or

prohibiting the use of the Park for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the County shall have no further liability under this Lease Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the County shall have no further liability under this Lease Agreement. If the County deems the Lease Agreement null and void by function of this Paragraph, the County will not be liable to the Lessee for damages arising there from and the County shall have no further liability under this Lease Agreement.

65. **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:

i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Facility, except as provided by law.

ii. 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, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law. All construction contracts between the Lessee and its subcontractors shall include the non-discrimination provisions.

iii. The Lessee shall use the Facility and Facility Site 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 County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

iv. In the event of breach of any of the above non-discrimination covenants, the County shall

have the right to terminate the Lease Agreement and re-enter and repossess said Facility thereon and hold the same as if said Lease Agreement 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 appellate rights.

v. The Lessee shall not discriminate against any employee or applicant for employment in the performance of the Lease Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, physical handicap (except where based on a bona fide occupational qualification), marital status or ancestry.

66. **No Waiver of Right to Enforce:** The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent hereunder by County shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease Agreement, other than the failure of Lessee to pay the particular Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Initial Rent, Guaranteed Monthly Rent, Additional Rent or Percentage Rent. No covenant, term, or condition of this Lease Agreement shall be deemed to have been waived by County, unless such waiver is in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Lessee.

67. **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 Lease Agreement. Failure to do so will constitute a breach of the Lease Agreement.

68. **Notices**: Any notices submitted or required by this Lease Agreement shall be sent by registered or

certified mail (or email or fax if provided below, with a hardcopy to the address below) addressed to the parties as follows or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party.

(1) To the County

a) to the Project Manager (the duly authorized representative designated to manage the Project):

Miami-Dade Park and Recreation
275 N.W. 2nd Street
Miami, FL 33128
Attention: Department Director
Phone: (305) 755-7800
Fax: (305) 755-7946

and,

b) to the Contract Manager (the duly authorized representative designated to manage the Contract):

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Department Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Lessee

Aqua Marine Partners, LLC
2890 NE 187th Street, Suite 107
Aventura, FL 33180
Attention: Andrew Sturner
Phone: (954) 374-2782
Fax: (954) 374-5438
E-mail: andy@aquamarinepartners.com

The County may alternatively provide notice by posting written notice on or at the Facility. If attempted delivery of such notice by mail 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.

69. **Interpretations:** This Lease Agreement and the Attachments hereto, and other documents specifically referred to herein, constitute the entire, fully integrated Lease Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written Lease Agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal Lease Agreements expressly and clearly incorporated by reference within the four corners of this Lease Agreement. This Lease 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 the County Manager (or designee) or the Contract Manager (or designee). This Lease Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only the Lease Agreement shall not be construed in favor of one party or the other. All matters involving the Lease Agreement shall be governed by laws of the State of Florida.

70. **Rights Reserved to County**: All rights not specifically granted to the Lessee by this Lease Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.

71. **Time of the Essence; Delay**:

A. Time is of the essence in the completion of all activities set forth in this Lease Agreement, and the milestones set forth in the Development Schedule and the Development Rider.

B. The Development Schedule sets forth the framework of the transition of the Facility Site from the County to the Lessee and the timeline for Lessee to achieve required approvals and permits and for the construction, occupancy, and Beneficial Occupancy Use of the Facility. The Lessee shall, not later than the issuance of the Notice-to-Proceed 1, submit to the County a construction schedule, in a format and with detail subject to the reasonable approval of the County (the "Construction Schedule"), which adheres to the deadlines and durations set forth in the Development Schedule. The Lessee shall update the Construction Schedule in writing and shall notify the County immediately of any impact to the schedule that could result in a delay to the Date

of Beneficial Occupancy of the Facility.

C. Except as otherwise expressly provided herein, neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that:

(i) Such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosions, riots, strikes (not including strikes of the Lessee's staff personnel), or war ("Force Majeure") and such time frames shall be extended for a period of time commensurate with such delay; or

(ii) Prior to the commencement of construction of the Facility, any action or inaction by the County or other third party government agency, including but not limited to City of Coral Gables, the State of Florida Department of Environmental Protection, the South Florida Water Management District, and United States Army Corps of Engineers, in the context of review, of Lessee applications, plans, drawings, or other submittals for the approval of any portion of the Facility or Facility Site or any permit required to construct the Facility or any improvements located on the Facility Site which causes an unreasonable or unexpected delay that is beyond Lessee's control in the Development Schedule, or compliance therewith, subject to reasonable approval by the County upon written notification by Lessee ("Excused Delay"), and such time frames shall be extended for a period of time commensurate with such delay, but in no circumstance shall such extension(s) exceed a period of twelve (12) months cumulatively.

D. Notwithstanding the foregoing, the failures of any of the Lessee's subcontractor(s) or the like shall not excuse the Lessee's performance except to the extent that such failures are due to any Force Majeure or Excused Delay.

72. **Effect of Appeal of Zoning or Permit Approvals:** The obtaining of any Zoning Approvals, as defined in the Development Rider, or any permit(s) 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 such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any Zoning Approval or permit(s), the obtaining of the Zoning Approval or permit(s)

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 final determinations and the time frames in the Development Schedule shall be automatically tolled by a time period equal to the time from the date of filing the original challenge until final determination of the challenge.

In the event of a challenge, appeal or denial of any required Zoning Approval or permit(s), Lessee shall have the right, but not the obligation, to defend such challenge or appeal or to file a challenge or appeal of such denial, through the first level of judicial review at its sole cost and expense. If Lessee is not successful in such defense or challenge, it shall have the right, but not the obligation, to pursue a second level judicial review at its sole cost and expense. In all instances where Lessee shall determine not to defend a challenge, or challenge a denial, it shall do so in a timely fashion with the goal that the County, as the Lessor and property owner, may defend or pursue such a challenge if it wishes to do so at its sole cost and expense. In all instances of a challenge, appeal or denial and a subsequent defense or challenge by either the Lessee or the County, the parties will reasonably cooperate with each other in the pursuit of such defense or challenge.

73. **Liquidated Damages**: If the Date of Beneficial Occupancy has not occurred on or before eighteen (18) months after the NTP-2, as defined in the Development Rider, as may be amended by any Force Majeure or Excused Delay, then for each day thereafter until the Date of Beneficial Occupancy, Lessee shall pay to County in the form of liquidated damages one thousand dollars ($1,000) for each day of delay. The date on which liquidated damages shall be imposed, if applicable, shall be referred to as the "Date of Liquidated Damages."

74. **Entirety of Lease Agreement**: The parties hereto agree that this Lease Agreement sets forth the entire Lease Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

75. **Headings**: The headings of the various Paragraphs and Sections of this Lease Agreement, and its

Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease Agreement or any part or parts of this Lease Agreement.

76. **Waiver:** Invalidation of any portion of this Lease Agreement shall not automatically invalidate the entire Lease Agreement.

77. **No Partnership or Agency**: The County and the Lessee are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Lease Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Lessee.

78. **Choice of Venue**: Any litigation between the County and the Lessee relating in any way to this Lease Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida.

79. **Inspector General Reviews:**

Independent Private Sector 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 Contractor 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 Contractor'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 Contractor, 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 Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

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. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

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 independent private sector inspectors general (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 Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor 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 Contractor'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.

80. **Business Application and Forms:** The Lessee shall be a registered vendor with the County – Department of Procurement Management ("Registered Vendor"), for the duration of this Lease Agreement. In becoming a Registered Vendor with Miami-Dade County, the Lessee confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the County Code)

2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2.8-1(d)(2) of the County Code)

3. **Miami-Dade Employment Drug-free Workplace Certification**

(Section 2-8.1.2(b) of the County Code)

4. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code)

5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code)

6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code)

7. Miami-Dade County Code of Business Ethics Affidavit
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code)

9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the County Code)

***10.* Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)

***11.* Subcontracting Practices**
(Ordinance 97-35)

***12.* Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)

***13.* Environmentally Acceptable Packaging**
(Resolution R-738-92)

***14.* W-9 and 8109 Forms**
(as required by the Internal Revenue Service)

***15.* FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting

departmental records

16. **Office of the Inspector General**
(Section 2-1076 of the County Code)

17. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Lease Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

81. **Sovereign Rights**:

Notwithstanding any provisions of this Lease Agreement and the County's status thereunder:

(a) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county 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 Facility or the operation thereof, or be liable for the same; and

(b) The County and any city shall not by virtue of this Lease 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 Facility.

Notwithstanding and prevailing over any contrary provision in this Lease Agreement, any County covenant or obligation that may be contained in this Lease Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, the County's Department of Environmental Resources Management, 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 power.

82. **Order of Precedence:**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: (1) these terms and conditions of this Lease Agreement, (2) the Scope of Services (Appendix A) and Development Rider (Appendix B), (3), the Lessee's Proposal, and (4) the Miami-Dade County's RFP No.635 and any associated addenda and attachments thereof.

83. **Authority of the County's Project Manager:**

a) The Lessee hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Lessee's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Lessee shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any

previous order and regardless of whether the Lessee agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Lessee must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Lessee and the Project Manager are unable to resolve their difference, the Lessee may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Lessee's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Lessee to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and

impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Lessee. Except as such remedies may be limited or waived elsewhere in the Agreement, Lessee reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

84. **Press Release or other Public Communication**:

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

85. **Approvals**: Except as provided otherwise, whenever prior approvals are required hereinabove or by Appendix A, Appendix B, or Exhibit 2, as attached hereto, by either Party, such approvals shall not be unreasonably withheld or delayed.

86. **Survival**: The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Lessee and the County under this Lease Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination,

cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the date first herein above set forth.

Lessee	Miami-Dade County
By:	By:
Name: Andrew Sturner	Name:
Title: CEO	Title:
Date: 3-23-11	Date:
Attest: Susselys Virgil Corporate Secretary/Notary	Attest: Clerk of the Board

Approved by County Attorney as to Form and Legal Sufficiency

STATE OF FLORIDA)
) SS:
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me this 23 day of March, 2011, by Andrew Sturner, as CEO of AQUA MARINE PARTNERS, LLC, a Florida limited liability company. He/She (He) is personally known to me or (_____) has produced a State of Florida driver's license as identification and did not take an oath.

Sign Name: Susselys Virgil

Print Name: Susselys Virgil

NOTARY SEAL

NOTARY PUBLIC,
STATE OF FLORIDA

SUSSELYS VIRGIL
MY COMMISSION # DD959660
EXPIRES February 08, 2014
(407) 398-0153 FloridaNotaryService.com

Appendix A

SCOPE OF SERVICES

1. INTRODUCTION

The Department owns and operates the Park located at 9610 Old Cutler Road, Miami, Florida. The Park resides within the City of Coral Gables and has been granted historic designation. The Lessee shall design and construct the Facility. The Lessee shall provide dry boat storage services at the Facility in a manner that provides a high level of service and quality to Park patrons.

The County currently has an agreement with a vendor providing for various concessions such as, restaurant, bait and tackle services, and fuel dock facilities, and an agreement with a vendor providing sailing and boating instruction in the Park. No retail services other than dry boat storage and related services herein shall be available to the Lessee, without prior written approval from the County. The County retains the right to operate and maintain its current surface dock facility which has a capacity for approximately 80 boats.

This project shall be divided into three phases: Design and Zoning Phase, Construction Phase and Operation Phase. The Lessee shall complete all three phases of the Project as the prime Lessee with Miami-Dade County. The Lessee shall be responsible for engaging the professional(s) or firm(s) that will serve as subcontractors that will perform services for any one or more than one phase of the Project. The subcontractors shall meet all County subcontractor requirements prior to the start of the sub-contract.

2. SITE DESCRIPTION

The Facility Site shall be as described in Paragraph 8 and Exhibit 1 to the Lease. All or a portion of the Facility Site is currently used for boat storage parking. As described in the Development Rider, Lessee shall relocate the parking area for trailer boats and preserve sufficient parking for the wet slip owners.

The Facility Site is provided in as-is condition. The areas allocated for development of the Facility are adjacent to environmentally sensitive mangroves. The Lessee shall minimize any harmful impacts to such areas. Any mitigation required by regulatory agencies, as a result of this Project, will be the sole responsibility of the Lessee.

Though the County will maintain ownership of the land, retain an interest in the Facility and its operations, as well as derive financial remuneration from this project, the Facility will be operated by the Lessee. Therefore, the Lessee shall take into account the long-range costs and responsibilities of managing, operating and maintaining this Facility. The Facility operation shall transfer to the County at the expiration or termination of the Lease Agreement.

Trailer/Boat Storage/Parking Area Relocation

The RFP and Lessee's Proposal call for the relocation of existing trailer/boat storage/vehicular parking. The Development Rider identifies the New Trailer Storage Area and sets forth timing and development guidelines for the construction of the New Trailer Storage Area.

3. DESIGN AND ZONING PHASE

The Lessee shall work closely with the County upon Lease execution to complete the planning, design and project scheduling in accordance with the Development Rider. The

Lessee shall bear all costs associated with all construction of, and fixture and equipment installations at, the Facility. All such construction and installation shall become the property of the County at the termination of the Lease Agreement.

A. Conceptual Plans

The Lessee has prepared, and submitted for Department approval, a proposed Conceptual Plan for the design of the Facility. The Conceptual Plan must incorporate elements which make the Facility compatible to the Park's design guidelines and beautiful tropical setting. The appearance of the Facility is subject to approval by the Department, at its sole discretion, subject to the City of Coral Gables review and approval as required.

B. Design

The Lessee shall design a Facility that is enclosed and incorporates design elements compatible with the historic nature of the Park while meeting all applicable building codes. The Facility shall provide for boat storage of approximately 330 boats. The Facility design shall include adequate parking for Facility patrons pursuant to applicable building codes.

1. The Lessee shall submit all renderings, photographs, floor plans, specification sheets, cut sheets, proposed paint schemes and graphics for all furnishings, fixtures, equipment, and soft goods to the Department for approval.

2. The Facility's design must comply with all the design parameters and building requirements of the Matheson Hammock Design Guidelines ("MHDG"). The Lessee shall abide by the restrictions contained in the MHDG which include, but are not limited to:

   A. The Facility site footprint area is approximately 100,000 square feet. The Facility design shall be compatible with the Park and surrounding area architecture.
   B. The Facility dockside shall have American with Disabilities Act access.

4. CONSTRUCTION PHASE

The Lessee shall construct the Facility with minimal impact to the public's enjoyment of the Park. The Lessee shall perform all Facility development in compliance with the Miami-Dade County version of the Florida Building Code and municipal building, federal, state, and local site permitting requirements. The Lessee shall obtain all necessary permits and approval, pay all required fees, and obtain Departmental approval prior to starting construction of the Facility. All design, zoning approval, and development and construction shall be in compliance with the County's Development Rider (see Appendix B).

The Lessee shall pay all expenses incurred in connection with the development. Any off-site public improvements required for development of the site (streets, street widening, streetlights, sidewalks, water/sewer mains, landscaping, etc.) shall be the responsibility of the Lessee. Extension, relocation, upgrading or connection of new utilities, patron facilities and any other Park facilities, if necessary for the site development, shall be the Lessee's responsibility. All development fees imposed by any

municipality, the County or any other agency or appropriate jurisdiction in connection with the development shall be the responsibility of the Lessee.

No construction shall commence without possession of all appropriate approvals and permits from all governing jurisdictions; however, Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall not be stopped from withholding or refusing to issue any approvals of and applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the design, construction and development of the improvements provided for herein. The County is not obligated to grant any applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the design, construction and development of the improvements provided for herein.

The Lessee shall provide landscaping that enhances the aesthetic beauty and coexists with the natural flora of the Park in accordance with the approved plans. The landscaping shall be maintained and properly irrigated to minimize water use.

Dockmaster's Office

The Lessee shall incorporate, construct and furnish a new dockmaster's office for the sole use of County personnel, within the Facility, approximately 1,000 square feet in size ("Dockmaster's Office"). The Lessee shall work collectively with the County in the design and development of the Dockmaster's Office. When the Certificate of Occupancy (CO) has been granted for the Facility, the Lessee shall sub-lease the Dockmaster's Office back to the County for $1.00 per year, including utilities. This payment shall be deducted by the Lessee from the Guaranteed Monthly Rent payment to the County on the first month following the date of CO and each one year anniversary thereafter, until such time as the County may decide to terminate this sub-lease.

5. FACILITY OPERATION PHASE

The Lessee shall maintain the Facility in the same or better condition, order and repair as on the date of CO of the Facility, excepting only reasonable wear and tear arising from the use thereof under the Lease Agreement.

The Lessee shall operate the Facility, including, but not limited to the following.

A. The Lessee shall provide all furnishings, fixtures, and equipment, of good quality and suitable for its purpose, required to operate the Facility.

B. The Lessee shall coordinate all of its activities with the County. The Lessee shall not undertake any activity which interferes with the operation of the Park or the marina.

C. The Lessee shall comply with all applicable 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 hereunder.

D. The Lessee and its employees or hired staff shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Lessee's employees or hired staff and not as employees of the County.

E. The Lessee shall provide excellent, prompt and efficient service to the Facility's patrons. Minimum service levels include:

1. Lessee shall provide top quality service meeting the patrons' needs and suitable for the Facility as approved by the County.

2. The Lessee shall have exclusive rights only to the Facility and will be permitted to manage and operate only to the extent that there is no interference with the normal operation of the Park and other concessionaires. Such determinations of interference will be made by the County.

F. The Facility shall provide the services seven days a week within marina hours of operation and any additional hours necessary to serve the boating public, as approved by the County. The Lessee shall have sufficient staff to provide service to the Facility patrons. Prior to beginning operations, the Lessee shall submit a schedule of intended hours of operation to the County for approval. The County may require changes in hours of operation if the County determines that such a change is desirable to provide the best service to the public.

G. The Lessee shall secure and provide security for the Facility Site. The County is not responsible for the Lessee's furnishing, fixtures, equipment, or supplies or the privately owned boats and related equipment stored in the Facility.

H. The Lessee shall provide the County its emergency evacuation plan and hurricane plan stating how the Lessee shall secure the equipment and the Facility in the event of an emergency. Such plans shall be subject to review and approval by the County and in accordance with the Park plans.

I. The Lessee shall take good care of the Facility and shall use the same in a careful manner and shall, at its own cost and expense, repair County property and the Facility damaged by Lessee's operations under the Lease Agreement.

J. The Lessee shall be diligent in ensuring the safety of the patrons of the Facility and Facility Site by meeting the requirements of Chapter 26 - Park and Recreation Department Rules and Regulations, Section 2, Article III entitled "The Shannon Melendi Act", for all owners, employees, and volunteers that will provide any services at the Facility prior to the scheduled start of employment or volunteerism.

6. ADDITIONAL SERVICES

The following additional services shall be provided by Lessee. The Lessee may modify the additional services listed herein with prior approval by the County.

A. Concierge Services

The Lessee shall provide three levels of Concierge services to Facility tenants, Silver, Gold and Platinum. Every tenant customer is a Silver member. Each of the three levels of membership include fax-ahead boat provisioning (soft drinks, water, sandwiches, snacks, etc.) at no extra cost beyond the price of those items ordered. The Gold and Platinum levels of membership will provide additional facility services and benefits at the rates

listed in No. 3 below.

1. A standard checklist will be applied dockside to all returning tenant boats. The checklist shall address pertinent information to properly care and maintain the tenant's boat. The checklist may include the following:

   a. Verify with tenant that all perishables have been removed.
   b. Verify with tenant that the condition of the boat is the same as when departed Matheson Hammock.
   c. Obtain from tenant any special needs, including washing, flushing and/or canvas treatment.
   d. Check and record fuel and water levels.
   e. Pump bilge.
   f. Lower all antennas, outriggers, bimini tops and lights.
   g. Install all canvas (in areas that do not inhibit subsequent storage activities).
   h. Store all fenders and lines.
   i. Trim engines as specified. Turn steering to straight-ahead alignment.
   j. Flush engines.
   k. Turn battery switches off.
   l. Remove keys and store in tenant key lock box.
   m. Open through-hull fitting(s) if so equipped.
   n. Button the canvas.

   And in the rinse area:
   o. Remove drain plug(s) if so equipped and place in mesh bag hung from stern.
   p. If equipped with a through-hull fitting(s), attach red pendant to mesh bag.
   q. Swab and dry.

2. Any tenant boat tied up to the Facility's docks after normal operating hours will be lifted, processed and stored immediately at the outset of Lessee's operations the following morning.

B. Boat towing services will be offered for Facility tenants whose vessels may become disabled in Biscayne Bay.

C. Sale of diving equipment, boating accessories, and marine supplies (which shall not conflict with existing contracts with County vendors at the Park, as determined by the County).

D. Any other related goods and services as approved by the County.

7. PRICING

Storage Rental Rates

The Lessee shall maintain the storage rental rates listed in Lessee's Proposal through the first year of operations. After the first year of operation, the rates may be adjusted to reflect the rates being charged by similar facilities in South Florida with prior County approval. Such request for rental rate adjustment shall not exceed once per year, regardless of whether increase was approved or disapproved for the previous year.

Appendix A

Lessee shall follow the guidelines in Article 27, Pricing, of the Lease Agreement for any rate adjustment.

Membership Prices

In addition to the storage rental rates, these are the additional service offerings and rates across all three levels of concierge services:

Silver level membership is included in the storage rental rates listed above. In addition to the Silver level membership, tenants may purchase the Gold level membership which will be offered at $7.50 per boat-foot-length a month, and the Platinum level membership, at $15.00 per boat-foot-length a month. The schedule below shows the different levels of membership services to be provided.

Service	Silver	Gold	Platinum
Service labor rate	$120 per hour	$110 per hour	$105 per hour
Exterior wash	$5 per foot	2 free per month	2 free per month
Complete detail and wax	$20 per foot	$18 per foot	2 free per year
Mechanical inspection/fluid check	$120 per hour	$120 per hour	Free
Engine flushes	Single engine $30 Twin engine $35 Triple engine $45	1 per month free	2 per month free
Bags of Ice	$2.50 per bag	2 bags free per month	4 bags free per month

For pricing on any goods or services not established herein, or for any proposed price changes, Lessee shall refer to Article 27 and Article 83 of this Lease Agreement.

Appendix B

DEVELOPMENT RIDER

Facility Site: Matheson Hammock Park

Project: Boat Storage Facility

This Development Rider, as attached to and hereby made a part of the Lease Agreement shall govern the development of the Facility within the Facility Site. Words and phrases used in this Development Rider shall have the same meaning as in the Lease Agreement unless specifically provided otherwise.

The Project Manager (PM), as defined in the Lease Agreement, shall be assigned by the Department to represent the County. The PM shall monitor compliance with the terms and conditions of the Development Rider; coordinate reviews, comments and approvals; attend Design and Zoning Phase and Construction Phase meetings; and provide periodic inspections to monitor compliance with the scope of services and schedule during design, construction, and close-out of the Facility.

Lessee's requests for modifications to the Final Plans, as defined herein, and/or schedule during any phase of the development process must be submitted in writing to the PM with sufficient documentation to justify said request. The Department will consider the information provided and any mitigating circumstances prior to approving or rejecting said requests.

I.LESSEE'S OBLIGATIONS TO DEVELOP THE FACILITY SITE

The improvements the Lessee develops at the Facility Site shall be designed and constructed in accordance with the provisions of the Lease Agreement. Lessee shall complete all improvements pursuant to the design and construction defined in Lessee's Proposal, as described in Appendix A of the Lease Agreement and as approved by the County.

Lessee understands and agrees that all costs associated with the design development, permitting, construction and close-out of the Facility, and any off-site improvements, shall be the sole responsibility of the Lessee. Prior to commencing construction, the Lessee shall provide proof, in a manner sufficient to satisfy the County, that the Lessee has obtained the necessary funds to complete the approved Facility.

The Lessee shall maintain all files, records, accounts of expenditures for the Facility and improvements, including improvements performed by Lessee's subcontractor's, in a local office within Miami-Dade County. The County shall have access to such records as provided in the Lease Agreement.

The Lessee shall pay to the County a fee for project management services incurred by the County in connection with development of the Facility (the "PM Fee"). The PM Fee shall be in the amount of 1.25% of the actual total cost of development of the Facility, including total cost of design and construction, but exclusive of any rental obligation or other obligations payable by Lessee to the County under this agreement (the "Total Development Cost"). In satisfaction of its obligation to pay the PM Fee, the Lessee shall pay to the County together with each Initial Rent or Guaranteed Monthly Rent, as applicable, payment commencing on the Effective Date the amount of four thousand five hundred and fifty seven dollars ($4557) per month, which is a proration of the estimated PM Fee based upon the Total Development Cost of the Facility ($17,500,000) which shall be paid over the anticipated monthly duration of the development, forty-eight (48) months. The amounts paid as PM Fee shall be adjusted to actual total cost of development at the end of construction ("Actual Total Development Cost") or upon termination of the Lease Agreement, whichever occurs first, when the Actual Total Development Cost is confirmed, to be based on an audit conducted at the expense of the Lessee.

Appendix B

The Lessee shall, upon execution of the Lease Agreement, and prior to preparing the Final Plans (as defined elsewhere in this document) and specifications, through the Department, initiate contact and confer with the representative designated by the County to coordinate, under the Art in Public Places ("APP") program, the review of the applicability of an art component to the Facility ("Art in Public Places Representative"). Should the Art in Public Places Representative determine that the installation of an art component is applicable to this Facility based on the provisions of Section 2-11.15 of the Miami–Dade County Code 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 Facility, 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 APP 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, APP 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 the services under this Lease Agreement.

Should the APP fee be assessed against this Lease Agreement, the Lessee shall at its sole cost expend one-and-a-half-percent (1.5%) of the cumulative design and construction cost for the refurbishment of existing works of art at the Facility 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 Facility shall comply with the 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 the funds appropriated for APP are expended.

1. Site Conditions. The Lessee accepts complete responsibility for all conditions encountered at the Facility Site, including, without limitation unforeseen site conditions, subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the construction plans, unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the project, and any dewatering activities necessary to construct the facility. The Lessee shall be responsible for the removal or relocation of man-made obstructions, abandoned foundations, utilities, and natural obstructions required for the completion of the Facility. The Lessee shall also be responsible for any and all site conditions, including environmental conditions, caused, disturbed, or exacerbated by the construction and agrees to be responsible for and pay for all environmental remediation work that is required to be performed resulting from the construction of the Facility. Should the estimated costs for environmental remediation exceed $250,000, Lessee shall promptly provide detailed cost estimate breakdown to the County. The County may consider sharing a portion of the actual expenses required by regulatory agencies exceeding $250,000 to accomplish said remediation. The consideration of the County shall be based on the feasibility of the Lease Agreement. If the Parties fail to reach an agreement for payment of any remediation costs exceeding $250,000, Lessee shall have the right to terminate the Lease Agreement. The Lessee further agrees not to initiate any claims or suits against the County relating to any site condition, including environmental conditions, and to indemnify, defend and hold harmless the County from and against any claims arising from an environmental condition caused or exacerbated by the Lessee in the construction of the Facility.

2. Development Schedule. As more particularly set forth in Paragraph 71 of the Lease, time is of the essence for all activities set forth in this Appendix B. The parties have attached a Development Schedule as Exhibit 2. The Lessee shall, not later than 15 days after approval of the Final Plans submit to the County

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a construction schedule, in a format and with detail subject to the reasonable approval of the County (the "Construction Schedule"), which adheres to the deadlines and durations set forth in the Development Schedule. The Lessee shall update the Construction Schedule monthly and shall notify the County immediately of any impact to the schedule that could result in a delay to the date of completion of the Facility. A material failure to meet those deadlines, as the same may be extended by Section 71 of the Lease Agreement or written agreement of the parties, shall be a breach of this Agreement.

A. Conceptual Plans. The Department shall review the conceptual plans submitted as part of the Lessee's Proposal for the aesthetics, design, construction of the Facility (hereinafter referred to as the "Conceptual Plans"), for substantial compliance, the provisions of the Lease Agreement, including Appendix A and this Appendix B. If the County has any comments and/or proposed modifications to the Conceptual Plans, the County shall provide comments and/or proposed modifications in writing to the Lessee within 15 calendar days from the Effective Date. Lessee shall incorporate said comments into a set of revised Conceptual Plans to be reviewed and approved by the County prior to commencement of the necessary zoning applications and public hearings in the City of Coral Gables.

B. Zoning Plans. As part of the preparation of the mandatory zoning applications required by the City of Coral Gables (the "City"), the Lessee shall meet with City officials to review the Conceptual Plans and shall make such changes as Lessee deems necessary and appropriate in order to attempt to gain approval from the various City Boards. Prior to submittal of the revised Conceptual Plans to the City as part of the zoning applications, Lessee shall submit said plans which shall also incorporate responses to prior County comments to the County for its review and approval. The County shall review the revised Conceptual Plans and shall either approve or provide comments within 15 days. If the County provides comments requiring modification of the plans, Lessee shall diligently make such changes and resubmit the plans as soon as reasonably possible and resubmit the revised Conceptual Plans to the County, which shall review the plans solely as it related to the changes and shall within 10 days provide approval or additional comments to Lessee. Upon County approval of the revised plans (the "Zoning Plans"), the Lessee shall submit the required applications, including the Zoning Plans, to the City for formal approval (hereinafter the Zoning Approval Process").

It is anticipated that the Zoning Plans will require approval of, among others, the following Boards of the City:

1) Development Review Committee;
2) Board of Architects;
3) Historic Preservation Board;
4) Planning and Zoning Board;
5) City Commission; and
6) Building Department.

The County and Lessee acknowledge that City and its Boards and City Commission have jurisdiction and permitting authority over the Project and as such may require or make unilateral changes and impose conditions upon the approval of the Zoning Plans. Lessee shall provide notice to the County of all scheduled hearings before the City Boards and the County is invited, but not required to attend all hearings to monitor the progress of the hearings and approvals, but Lessee shall remain responsible for the conduct of said hearings.

Lessee shall be permitted to make non-material changes to the Zoning Plans without prior County approval but shall submit copies of any such revised plans to the County simultaneously with resubmittal to the City. If the City requires or imposes material changes to the Zoning Plans, the Lessee and County shall meet to discuss the changes to determine a mutually acceptably approach and response to the requested, or required changes. In the event that the Lessee and County cannot agree upon a mutually acceptable

response within 45 days either party shall have the right to terminate the Lease upon 30 days written notice to the other. If the non-terminating party wishes to proceed despite the required material modification, it shall give notice to the other party that it is invoking a right to non-binding mediation and the parties shall meet with a mutually acceptable mediator to attempt to determine a mutually acceptable cause of action. If the parties still cannot agree upon a course of action after a good faith attempt to mediate the disagreement, then the termination shall become effective 15 days after completion of the mediation. The costs of mediation shall be borne equally by both parties.

Upon receiving all required development orders and other approvals from the City for size, shape, design, aesthetics, and use of the Facility and the Facility Site ("Zoning Approvals"), if it has not already done so, Lessee shall proceed with preparation of Preliminary Plans, as defined elsewhere herein, based upon the Final Approved Zoning Plans incorporating and responding to any conditions imposed in the Zoning Approvals.

C. Preliminary Plans and Specifications. Prior to commencing the development of the Preliminary Plans, the Lessee shall schedule and coordinate a kick off meeting with the PM to review the Development Schedule including start and completion dates as well as major milestones and the Total Development Cost estimate. Within 60 calendar days after completion of the Zoning Approval Process and final approval of the Zoning Plans by the City of Coral Gables, unless a written request for extension has been received and approved by the PM, Lessee, at its cost, shall prepare and deliver to the Department five (5) sets of preliminary plans and a CADD file for the construction of the Facility prepared by an architect and/or engineer licensed to practice as such in Florida (hereinafter referred to as "Preliminary Plans"). The Preliminary Plans shall include the Total Development Cost estimate and updated Development Schedule and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Park, curbs, gutters and parkways; lighting; locations for outdoor signs; and storage areas; 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 Facility shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Lessee as approved by the Department. Additionally, such Preliminary Plans of the improvements shall be in strict adherence to Article 7 of the Miami-Dade County Home Rule Charter. The Facility shall be constructed within the area described in Appendix A, Section 2 – "Site Description" of the Lease Agreement. The Lessee shall also be responsible for all off-site improvements required to accomplish the construction and occupancy of the Facility. The Facility shall be aesthetically and functionally compatible with the setting of the Park. Within 30 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 Department shall not be unreasonable in exercising its approval rights hereunder. Lessee shall resolve all comments and requests for modifications by the Department to the Preliminary Plans and obtain written approval from the Department prior to proceeding with the development of the Final Plans.

D. Final Plans. Within 90 days after the Preliminary Plans and specifications are approved by the Department, the Lessee, at its cost, shall prepare and deliver to the Department five (5) sets of final plans, one CADD file, and specifications for the Facility, which plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect and/or engineer licensed to practice as such in Florida ("the Final Plans"). The Final Plans and all associated addenda and attachments shall be incorporated to the Lease Agreement by reference.

The Final Plans shall be considered 100% construction documents and include and updated Total Development Cost Estimate and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; grading and drainage plans; soil tests; utilities, sewer and service

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connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Park, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and off-site improvements. Completed technical specifications shall be included under the Final Plans.

Within 45 days after the Department receives Final Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Lessee specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Lessee shall resolve all comments and requests for modifications by the Department to the Final Plans and obtain written approval from the Department prior to proceeding with the permitting.

E. Permits. Not later than 2 days after the date that Lessee receives the Department's written approval of the Final Plans, Lessee shall commence seeking from all governmental agencies having jurisdiction over the Park and the Facility all such required permits, and Lessee shall exercise due diligence in attempting to obtain such permits.

The Lessee shall keep the PM informed of the progress during the permitting phase and coordinate with the Department to ensure that permitting requirements are acceptable to the Department when said requirements will modify the scope or aesthetics of the Facility or its location within the Park. The Final Plans shall not be 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.

If Lessee is unable to obtain such permits within 180 days from the date Lessee receives County's approval of the Final Plans, the County shall have the right to terminate the Lease Agreement upon notice to the Lessee. The County shall have the right, in its sole discretion and only for good cause shown, to extend the time within which Lessee must obtain such permits. However, the County shall be under no obligation to grant such extensions of time. When Lessee obtains all such permits it shall deliver copies of them to the Department.

The Lessee shall not discriminate against any employee or applicant for employment in the performance of the Lease Agreement with respect to their 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 when based on bona fide occupational qualifications; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts/subcontracts shall include the above non-discrimination provisions.

F. Trailer/Boat Storage/Vehicular Parking Area Relocation Prior to Date of Delivery of Facility Site

In order to replace the existing trailer/boat storage/vehicular parking area, the County has identified an area across from and generally to the north of the current bait and tackle store as an acceptable area for trailer/boat storage/vehicular parking as identified in Lessee's Proposal as "Potential Additional 82 Parking Spaces". The County and Lessee shall cooperate to more definitely identify the location and scope and design of the new trailer/boat storage/vehicular parking area during the Conceptual Plans approval process (the "New Trailer Storage Area"). To the extent required by law, Lessee, shall include the New Trailer Storage Area in its zoning plans and applications.

As soon as reasonably practicable after a completion of the Zoning Approval Process, Lessee shall submit all required applications for permits to construct New Trailer Storage Area.

Within 14 days or such other time as the parties may reasonably agree of the issuance of permits allowing for the commencement of construction of the New Trailer Storage Area, the County shall turnover the New Trailer Storage Area to Lessee (such date hereinafter referred to as "Date of Delivery of New Trailer

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Storage Area") and hereby grants to Lessee a temporary construction license over the New Trailer Storage Area and any additional areas the County and Lessee identify in writing as necessary to allow Lessee to construct the New Trailer Storage Facility to Lessee.

Prior to turnover by the County and throughout the Construction Phase of the New Trailer Storage Area, Lessee shall provide the required insurance identified in Paragraph 54 of the Lease for the New Trailer Storage Areas and Lessee shall be solely responsible for the New Trailer Storage Area.

Upon completion of the construction and acceptance by the County of the New Trailer Storage Area Lessee shall be relieved of any further responsibility for the New Boat Storage Area and the temporary construction license shall terminate.

The County agrees that within 14 days of its acceptance of the New Trailer Storage Area that it will vacate the Facility Site and will, subject to Lessee meeting all other requirements set forth herein, issue the NTP-2 for the Facility Site.

The Department will continue to operate and be responsible for the existing trailer storage (fenced in area) until the New Trailer Storage Area is completed by Lessee and turned over to the County prior to issuance of the NTP-2 for the construction of the Facility.

G. Commencement and Completion of Construction of the Project. Within thirty (30) days from the date that the Lessee obtains all permits required to begin construction of the Facility, the Lessee shall submit copies of all permits, updated Total Development Cost Estimate, proof that funding is available for construction a Schedule of Values (SOV) for construction, and updated Development Schedule indicating construction and close-out start and completion dates as well as major milestones of the Facility. Within fifteen (15) days after the Department receives copies of all permits, updated Total Development Cost Estimate, proof that funding is available, SOV, and updated Development Schedule, the Department shall either approve of them or deliver to Lessee specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Lessee shall resolve all comments and requests for modifications by the Department. Once all comments have been satisfactorily addressed by the Lessee, the Department shall issue a Notice-to-Proceed - 1 ("NTP-1") to the Lessee.

The Lessee shall have 15 days from the date of the NTP-1 to submit all required insurances and bonds to the Department prior to commencing construction.

The Lessee shall schedule a pre-construction meeting with the PM prior to mobilization ("Pre-Construction meeting"), which shall serve to review all completed work to date, and discuss the upcoming construction activities and its impact to Park operations.

Upon agreement by the PM to all construction work activities and the associated logistics and timing, and upon County review and approval of the insurances and bonds submitted by Lessee after issuance of the NTP-1, a Notice-to-Proceed ("NTP-2") and Authorization to Occupy the Site shall be issued turning over possession of the Facility Site to Lessee (such date hereinafter referred to as "Date of Delivery of Facility Site"). Lessee shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Facility shall be in accordance with the Final Plans.

The Final Plans shall not be 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. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to scope, budget and schedule; materials; performance, etc.) to provide timely responses. All work in connection with the construction of the Facility shall be performed in

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conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Lessee will allow unobstructed inspection by the Department's staff to determine compliance with the approved plans and specifications throughout construction. The Lessee shall be responsible to provide any temporary facilities needed in support of its construction of the Facility.

Upon issuance of the NTP-2, the Lessee shall complete the construction of the Facility within 18 months, unless extended by Force Majeure or Excused Delay ("Deadline for Completion of Construction"), as evidenced by a TCO or CO. In the case of delays that are beyond the control of the Lessee, the County may, at its sole discretion, grant a written extension. The Lessee shall submit a comprehensive timeline for the start-up of the Facility, including the Construction Phase and cost estimates to the Department for its approval within ten days of the NTP-1.

Upon completion of construction of the Facility, Lessee shall, at its cost, obtain a survey of the Facility and surrounding impacted areas and deliver said survey to the Department along with one copy of the "as built" drawings, and a CADD file, accurately reflecting the constructed Facility, its supporting infrastructure and off-site improvements at the Park. A new Exhibit 1 showing the exact location of the Facility at the Park shall be incorporated into the Lease Agreement and provided by the County to the Lessee.

H. Provisions Applicable during Construction of Facility. In addition to the other provisions of the Lease Agreement, the following provisions shall be applicable during the period of time that Lessee constructs Project:

1. All construction shall be performed by licensed contractors approved by the Department. Lessee shall furnish the Department with a true copy of Lessee's contract with the general contractor showing a breakdown of costs.

2. During the construction of the Facility, the PM 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.

3. In addition to the weekly/monthly construction meetings, the Lessee shall schedule and coordinate the Pre-Construction Meeting, 50% progress meeting, 75% progress meeting and 100% substantial completion walk-thru meeting with the PM.

4. The PM or appropriate designee shall provide input to the construction punch-list items and shall issue a final acceptance of the Facility once all work has been completed and all permits have been approved and closed by all agencies having jurisdiction (the "Final Acceptance"). Upon issuance of Final Acceptance, the facility may be occupied and opened for its desired intent.

5. Any changes requested by the Lessee modifying the approved Final Plans must be in writing and approved by the Department prior to implementation. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to scope, budget and schedule; materials; performance, etc.) to provide timely decisions

6. Within 30 days after the specified one (1) year warranty period, the Lessee shall schedule a walk-thru of the Facility with the PM and its contractor, to inspect all construction systems and ensure it's intended functionally and expected workmanship. The warranty period warrants the work under the construction improvements, defined in the Lease Agreement, to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of Final Acceptance. This one-year period shall

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be covered by the Surety Bond as required by this Development Rider. After the warranty inspection is completed with satisfactory results as determined by the PM, the close-out period is concluded expect as provided for under Florida Statute 95.11 (3) (c).

I. Bonds and Insurance:

1. The Lessee shall have 15 days from the date of NTP-1 to submit all required insurances, pursuant to the Lease Agreement, and bonds to the Department prior to any construction work on the Facility Site, and prior to the purchase 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 performance and payment bond which satisfies the requirements of Section 255.05 of the Florida Statutes 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 Facility ("Surety Bond"). Such Surety Bond shall be submitted in a form acceptable to the County, and shall name the Lessee as the principal and the County as the obligee.

2. Surety Bond Qualifications: The following specifications shall apply to bid, performance, payment, maintenance, and all other types of bonds.

A. 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 bond 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:

1. 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,

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

3. 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.

B. 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.

C. 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.

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The Lessee may in lieu of the Surety Bond, submit a cash bond, conditioned upon the faithful performance of the work in strict accordance with the Lease Agreement and with the Plans and Specifications and the completion of the same free from all liens and within the time limit herein specified ("Payment Bond"); said Payment Bond shall be so worded as to make the Lease Agreement 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 Lease Agreement to the same extent as if he or they were the obligee or obligee therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

Florida Statutes 255.05 provide 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."

3. The bonds shall provide the following, without limitation:

a. That a payment bond in an amount not less than one-hundred percent (100%) the cost of construction of the Facility is obtained that is conditioned to secure the completion of the Facility free from all liens and claims of contractors, subcontractors, mechanics, laborers and material men in a County approved bond form to be provide by Lessee;

b. That a performance bond in an amount not less than one-hundred percent (100%) the cost of construction of the Facility is obtained that insures that the construction work shall be effected by the general contractor or, on their default, the surety in a County approved bond form to be provide by Lessee; 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 Facility, up to the maximum bond requirement amount.

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

5. If no specific periods of warranty are stated in the Agreement or elsewhere in this

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Development Rider, for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of Final Acceptance form. This Surety Bond or Payment Bond does not limit the County's ability to pursue directly with the Lessee or its contractor seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11 (3) (c), Florida Statutes.

J. Prior to the commencement of construction. Lessee shall provide or cause its subcontractors 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 shall be maintained until substantial completion of the work, as determined by the Department.

(This insurance is in addition to the insurance required elsewhere.)

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 solely 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.

II. THE COUNTY'S CONSTRUCTION OBLIGATIONS

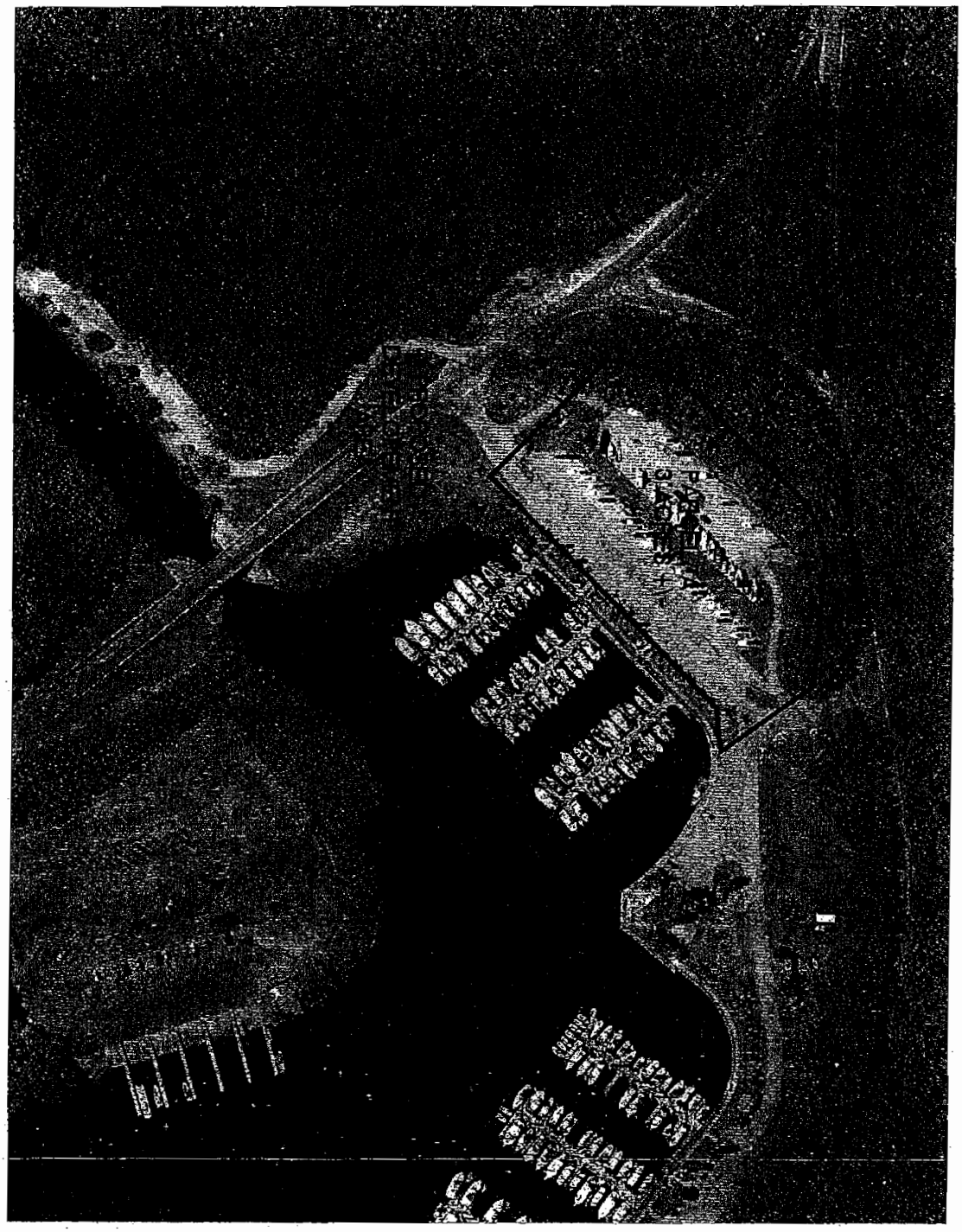
A. Conditions of Facility Site. The County shall deliver physical possession of the Facility Site to Lessee in an "as is" condition so that Lessee may commence construction.

The areas within the Park to be occupied by the Lessee during the execution of the work shall be delineated in the construction documents plans as agreed to between the County and Lessee. The County shall provide for areas to be designated as the "limits of work" and shall include construction staging area, construction access, and the development site.

The limits of the work shall be sufficient to properly undertake the necessary construction activities within the Park site so long as normal operations are not impeded.

B. Reasonable Access. The County shall provide reasonable access to allow Lessee to have utilities brought to the Facility Site and to have constructed the approved improvements described in the Lease Agreement.

EXHIBIT 1
Facility Site Plan

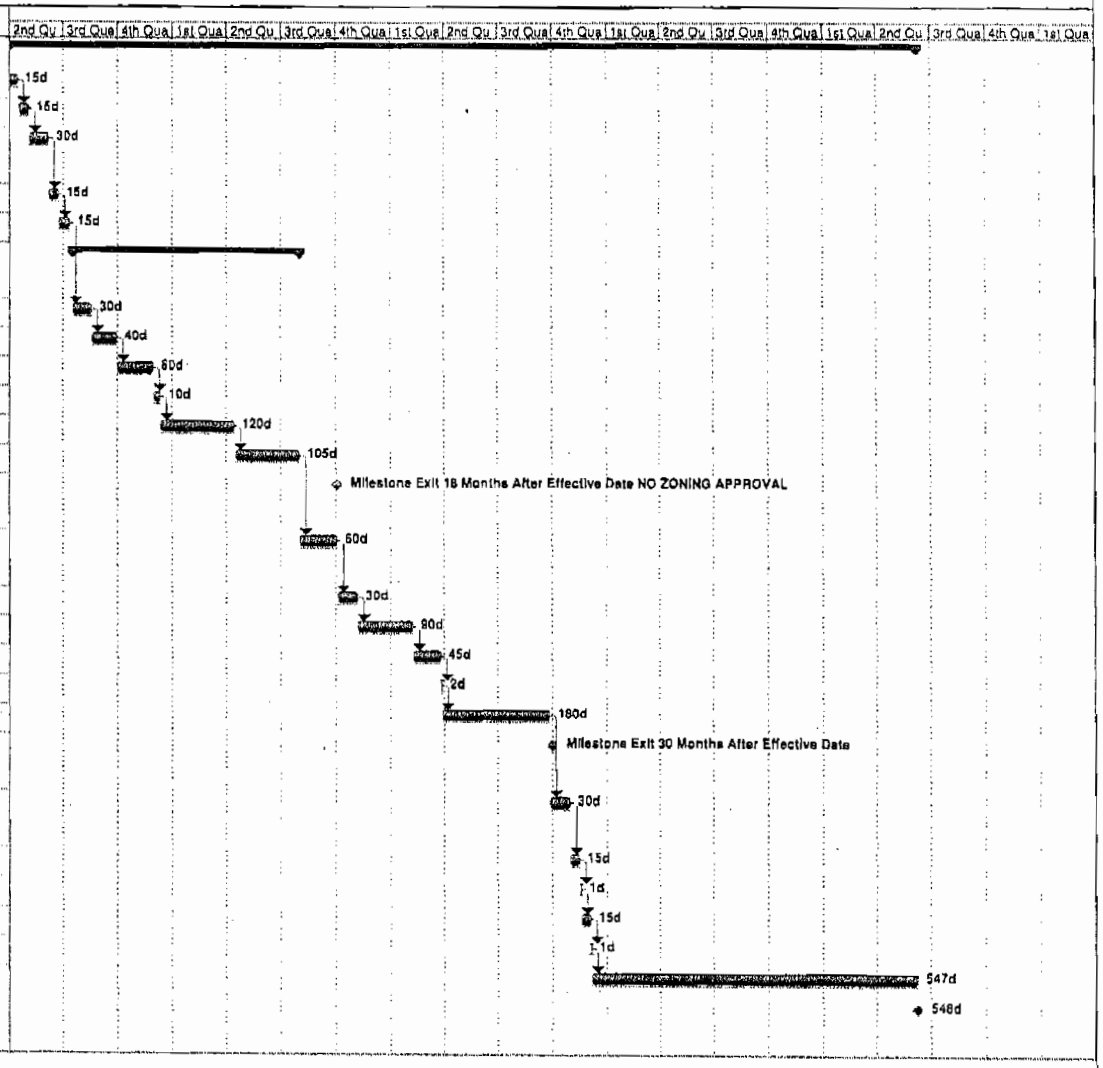


Project Title:
MATHESON HAMMOCK PARK
Drawing Title:
PROPOSED DEVELOPMENT AREA

Miami-Dade County
Park and Recreation Department

"Exhibit 2 Development Schedule"

ID	Task Name	Resource Names
1	**Total Project Duration (1471 DAYS)**	
2	Prep of Conceptual Plans (15 DAYS)	15 - DAED
3	County Reviews Conceptual (15 DAYS)	30 - DAED
4	AMP Prep of Revised Concept Plans w/ City Comments (30 DAYS)	60 - DAED
5	County Review and Approval of Zoning Plans (15 DAYS)	75 - DAED
6	AMP Submits Zoning Plans to the City (15 DAYS)	90 - DAED
7	**AMP Zoning Approval Process (County / Coral Gables) (379 Days)**	469 - DAED
8	Development Review Committee (30 Days)	120 - DAED
9	Board of Architects (40 Days)	160 - DAED
10	Historic Preservation (60 Days)	220 - DAED
11	Board of Architects (10 Days)	230 - DAED
12	Planning & Zoning (120 Days)	350 - DAED
13	City Commission (105 Days)	455 - DAED
14	**Milestone Exit 18 Months After Effective Date NO ZONING APPROVAL**	548 - DAED
15	AMP Submits Preliminary Plans to the County (60 DAYS) (Based on Zoning Approvals)	515 - DAED
16	County Review/Approval Prelim Plans (30 DAYS)	545 - DAED
17	AMP Submit Final Plans (90 DAYS)	635 - DAED
18	County Review/Approval Final Plans (45 DAYS)	680 - DAED
19	Permit Application (Env, Building, Other) (2 DAYS)	682 - DAED
20	Permit Issuance (180 DAYS)	862 - DAED
21	**Milestone Exit 30 Months After Effective Date**	900 - DAED
22	AMP Delivers Proof of Permit, Funding, Insurance (After Permit Issuance) (30 DAYS)	892 - DAED
23	County Review/Approval (15 DAYS)	907 - DAED
24	Issuance of Notice To Proceed - 1 (1 DAY)	908 - DAED
25	AMP Submits Insurance and Bonds (15 DAYS)	923 - DAED
26	Issuance of Notice To Proceed - 2 (1 DAY)	924 - DAED
27	Deadline for Completion of Construction (18 MONTHS)	1471 - DAED
28	**Date of Liquidated Damages 18 Months after NTP - 2**	1472 - DAED



Project: Matheson Hammock Park

Task		Summary		Rolled Up Progress		Project Summary	
Progress		Rolled Up Task		Split		Group By Summary	
Milestone	◆	Rolled Up Milestone		External Tasks		Deadline	

Exhibit 2
Matheson Hammock Development Schedule

SOURCE

1. N/a
2. Appendix B, §2A and §2B
3. Appendix B, §2A and §2B
4. Appendix B, §2B
5. Appendix B, §2B
6. Appendix B, §2B
7. N/a
8. Appendix B, §2B
9. Appendix B, §2B
10. Appendix B, §2B
11. Appendix B, §2B
12. Appendix B, §2B
13. Appendix B, §2B
14. Lease Agreement, Paragraph 58(D)
15. Appendix B, §2C
16. Appendix B, §2C
17. Appendix B, §2D
18. Appendix B, §2D
19. Appendix B, §2E
20. Appendix B, §2E
21. Lease Agreement, Paragraph 58(D)
22. Appendix B, §G
23. Appendix B, §G
24. Appendix B, §G
25. Appendix B, §G
26. Appendix B, §G
27. Appendix B, §G
28. Lease Agreement, Paragraph 72

MIAMI 2441641.2 7573119447
3/1/11

Memorandum

MIAMI-DADE COUNTY

Date: April 3, 2009

To: George M. Burgess
County Manager

Thru: Amos C. Roundtree, CPSM
for
Miriam Singer, CPPO
Director
Department of Procurement Management

From: J.C. Romano, CPPB
Procurement Contracting Officer
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 635: Matheson Hammock Park Boat Storage Facility

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The Evaluation/Selection Committee has completed the evaluation of proposals submitted in response to the above referenced Request for Proposals (RFP) following the guidelines published in the solicitation as summarized below.

Committee meeting dates:
October 10, 2008 (kick-off meeting)
December 2, 2008 (evaluation meeting)
December 17, 2008 (evaluation meeting, scoring)
January 30, 2009 (oral presentations)
March 11, 2009 (evaluation meeting)
March 18, 2009 (second oral presentations, final scoring)

Verification of compliance with contract measures:
Not applicable since the Review Committee did not assign any contract measures to this solicitation as it is a revenue generating contract.

Verification of compliance with minimum qualification requirements:
The solicitation did not have any minimum qualification requirements.

Summary of scores:
The preliminary scores (pre-oral presentations) are as follows:

	Pre-Oral Presentations		
Proposer	***Technical Score***	***Price Score***	***Total Combined Score***
	(max.425)	*(max.75)*	*(max.500)*
1. Westrec Marina Management, Inc.	379	67	446
2. Gables Harbour Marina, LLC	345	57	402
3. Aqua Marine Partner, LLC	329	55	384
4. Rickenbacker Marina, Inc.	309	46	355
5. Marine Management, Inc.	224	54	278

The Evaluation/Selection Committee decided to hold oral presentations with the three top ranked firms. Upon conclusion of the oral presentations, the Evaluation/Selection Committee re-evaluated and re-ranked the proposals remaining in consideration.

The final scores (post oral presentations) are as follows:

Post-Oral Presentations

Proposer	*Technical Score*	*Price Score*	*Total Score*	*Price Submitted* *Initial Rent*	*Guaranteed Rent*	*% Gross Receipts*
	(max.425)	*(max.75)*	*(max.500)*			
1. Aqua Marine Partner, LLC	374	58	432	$1,500	$17,000	1%
2. Gables Harbour Marina, LLC	344	63	407	$2,000	$5,000	10%
3. Westrec Marina Management, Inc.	326	70	396	$1,000	$10,000	15%

Local Preference:
Local Preference was considered in accordance with applicable ordinances, but did not affect the outcome as no firm was within 5% of the highest ranked firm.

Negotiations:
The Evaluation/Selection Committee recommends that the County enter into negotiations with the proposer with the highest score, Aqua Marine Partner, LLC. The following individuals will participate in the negotiations:

J.C. Romano, Procurement Contracting Officer, DPM
Frank Faragalli, Assistant Director for Operations, Park & Recreation
Roger Lewis, Chief, Strategic Business Planning, Park & Recreation
Kathy Haley, Marina Division Manager, Park & Recreation

Justification for Recommendation:
The proposal submitted by Aqua Marine Partner, LLC, as well as their oral presentation, was thorough. The firm and their key personnel have the required experience in the construction and boat storage industry for this project. In addition, Aqua Marine Partner, LLC demonstrated an awareness and understanding of the City of Coral Gables building codes. The firm proposed a $17,000 monthly rent that is guaranteed from construction completion (i.e., certificate of occupancy) through the twenty year contract term, adjusted upward yearly for Consumer Price Index (CPI).

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved

George M. Burgess
County Manager

7/29/09
Date

Not Approved

George M. Burgess
County Manager

Date

PRE-ORALS

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA / PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	125	118	102	97	92	71
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	100	96	89	87	82	71
Proposer's approach to providing the services requested in this Solicitation	40	200	165	138	161	135	82
Proposer's Financial Information	15	75	67	55	57	46	54
TOTAL POINTS	100	500	446	384	402	355	278

SIGNATURE: J.C. Romano — PRINT: J.C. Romano — DATE: 3/20/09

Chairperson

Reviewed By — Amado Gonzalez — 3/20/09

3/20/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

PRE-ORALS

KATHLEEN HALEY (MDPR)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	23	21	22	15	10
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	18	18	18	14	15
Proposer's approach to providing the services requested in this Solicitation	40	35	28	34	33	10
Proposer's Financial Information	15	12	10	10	10	10
TOTAL POINTS	100	88	77	84	72	45

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

PRE-ORALS

JEFFREY WEST (MDPR)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	22	15	20	20	21
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	18	13	16	16	14
Proposer's approach to providing the services requested in this Solicitation	40	30	20	37	20	15
Proposer's Financial Information	15	15	7	7	6	10
TOTAL POINTS	100	85	55	80	62	60

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

PRE-ORALS

JOHN PEREZ (SEAPORT)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	25	23	20	20	10
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	18	20	18	10
Proposer's approach to providing the services requested in this Solicitation	40	40	35	40	33	30
Proposer's Financial Information	15	12	11	13	11	9
TOTAL POINTS	100	97	87	93	82	59

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

PRE-ORALS

SHELLIE RANSOM (GSA)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	23	21	15	15	10
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	20	13	14	12
Proposer's approach to providing the services requested in this Solicitation	40	35	30	25	24	17
Proposer's Financial Information	15	13	12	12	7	10
TOTAL POINTS	100	91	83	65	60	49

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

PRE-ORALS

RUDOLPH GRIFFITH (SBD)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC	Rickenbacker Marina, Inc.	Marine Management, Inc.
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	25	22	20	22	20
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	20	20	20	20
Proposer's approach to providing the services requested in this Solicitation	40	25	25	25	25	10
Proposer's Financial Information	15	15	15	15	12	15
TOTAL POINTS	100	85	82	80	79	65

03/19/2009

POST-ORALS

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA / PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	125	119	101	96
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	100	96	91	90
Proposer's approach to providing the services requested in this Solicitation	40	200	111	182	158
Proposer's Financial Information	15	75	70	58	63
TOTAL POINTS	100	500	396	432	407

SIGNATURE:	PRINT:	DATE:
J. C. Romano	J. C. ROMANO	3/20/09
Chairperson		
	Amado Gonzalez	3/20/09
Reviewed By		

3/20/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

POST ORALS

KATHLEEN HALEY (MDPR)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	24	20	21
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	18	18	18
Proposer's approach to providing the services requested in this Solicitation	40	30	32	34
Proposer's Financial Information	15	15	10	13
TOTAL POINTS	100	87	80	86

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

POST ORALS

JEFFREY WEST (MDPR)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	22	15	20
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	18	13	16
Proposer's approach to providing the services requested in this Solicitation	40	15	40	37
Proposer's Financial Information	15	15	7	7
TOTAL POINTS	100	70	75	80

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

POST ORALS

JOHN PEREZ (SEAPORT)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	25	23	20
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	20	20
Proposer's approach to providing the services requested in this Solicitation	40	35	40	40
Proposer's Financial Information	15	12	11	13
TOTAL POINTS	100	92	94	93

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

POST ORALS

SHELLIE RANSOM (GSA)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	23	21	15
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	20	16
Proposer's approach to providing the services requested in this Solicitation	40	16	35	32
Proposer's Financial Information	15	13	15	15
TOTAL POINTS	100	72	91	78

03/19/2009

RFP NO. 635
MATHESON HAMMOCK PARK BOAT STORAGE FACILITY
EVALUATION OF PROPOSALS

POST ORALS

RUDOLPH GRIFFITH (SBD)

SELECTION CRITERIA / PROPOSERS	Maximum Points	WESTREC Marina Management, Inc.	Aqua Marine Partner, LLC	Gables Harbour Marina LLC
Proposer's experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	25	25	22	20
Relevant experience and qualifications of individuals, including individuals of subcontractors, that will be assigned to this project and experience and qualifications of subcontractors	20	20	20	20
Proposer's approach to providing the services requested in this Solicitation	40	15	35	15
Proposer's Financial Information	15	15	15	15
TOTAL POINTS	100	75	92	70

03/19/2009

Memorandum

MIAMI-DADE COUNTY

Date: NOV 0 5 2008

To: J.C. Romano, Chairperson
Department of Procurement Management

From: George M. Burgess
County Manager

Subject: Request for Evaluation/Selection Committee for the Miami-Dade Parks and Recreation Department Request for Proposals for Matheson Hammock Park Boat Storage Facility - RFP No. 635 **(Substitution #1)**

Please be advised that I am substituting Aida Bao-Garciga of the Miami-Dade Aviation Department in place of Alternate member, Alina Exposito of the same department. Should you have any questions, please refer them to Sharon Ryland of the Department of Small Business Development.

Selection Committee
J.C. Romano, DPM, Non-Voting Chairperson
Kathleen Haley, PRD
Jeffrey West, PRD
John Perez, Seaport
Shellie K. Ransom, GSA
Rudolph Griffith, SBD
Aida Bao-Garciga, MDAD (Alternate)

Technical Advisors (Non-Voting)
Roger Lewis, PRD
Jon Seaman, PRD

c: Miriam Singer, Director, DPM
Jack Kardys, Director, PRD
Bill Johnson, Director, Seaport
Wendi Norris, Director, GSA
Jose Abreu, Director, MDAD
Penelope Townsley, Director, SBD

Memorandum

MIAMI-DADE COUNTY

Date: JUL 2 5 2008

To: Those Listed Below

From: George M. Burgess
County Manager

Subject: Request for Evaluation/Selection Committee for the Miami-Dade Parks and Recreation Department Request for Proposals for Matheson Hammock Park Boat Storage Facility - RFP No. 635

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for the Miami-Dade Parks and Recreation Department Request for Proposals for Matheson Hammock Park Boat Storage Facility - RFP No. 635:

Selection Committee
J.C. Romano, DPM, Non-Voting Chairperson
Kathleen Haley, PRD
Jeffrey West, PRD
John Perez, Seaport
Shellie K. Ransom, GSA
Rudolph Griffith, SBD
Alina Exposito, MDAD (Alternate)

Technical Advisors (Non-Voting)
Roger Lewis, PRD
Jon Seaman, PRD

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria, to make oral presentations at a properly noticed public hearing to the full Selection Committee.

The Selection Committee shall be responsible for evaluating, rating and ranking the proposals by each Committee member, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and Cost/Revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

If you are unable to participate in the Selection process, contact this office through Small Business Development (SBD) by memorandum documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management's (DPM) RFP Unit may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Following the oral presentation, or upon completion of the review process, the Committee shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the top recommended firm(s) based upon the reasoning and mathematical formula, if utilized, and attach supporting documentation and a summary sheet which MUST include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through SBD for review and consideration for further recommendation to the Board of County Commissioners.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyists and/or consultants. Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are prohibited from having any communication with potential respondents and/or their representatives. Violation of this policy could lead to termination.

All questions must be directed to the staff contact person(s) designated by the issuing department.

c: Miriam Singer, Director, DPM
Jack Kardys, Director, PRD
Bill Johnson, Director, Seaport
Wendi Norris, Director, GSA
Jose Abreu, Director, MDAD
Penelope Townsley, Director, SBD

Selection Committee
J.C. Romano, DPM, Non-Voting Chairperson
Kathleen Haley, PRD
Jeffrey West, PRD
John Perez, Seaport
Shellie K. Ransom, GSA
Rudolph Griffith, SBD
Alina Exposito, MDAD (Alternate)

Technical Advisors (Non-Voting)
Roger Lewis, PRD
Jon Seaman, PRD