MEMORANDUM

Agenda Item No. 8(P)(3)

TO: Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners

DATE: December 2, 2025

FROM: Geri Bonzon-Keenan County Attorney

SUBJECT: Resolution, in accordance with section 125.35, Florida Statutes, approving of the award and authorizing the County Mayor to execute a Lease Agreement between Miami-Dade County, as the Landlord, and Haulover Bay LLC as the Tenant, for Haulover Marina-Front Restaurant with an initial lease term of 20 years with two, ten-year options to renew, and projected revenue totaling approximately $53,000,000.00 for a long term lease of approximately 0.459 acres of County-owned property for the Parks, Recreation and Open Spaces Department; and authorizing the County Mayor to execute the lease agreement and to exercise all provisions contained therein, including termination and amendment provisions

Resolution No. R-1163-25

The accompanying resolution was prepared by the Strategic Procurement Department and placed on the agenda at the request of Prime Sponsor Commissioner Micky Steinberg and Co-Sponsor Senator René García.

Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum

Date: December 2, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava Daniella Levine Cava
Mayor

Subject: Recommendation to Award a Development Lease Agreement for Haulover Marina-Front Restaurant

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Summary
This item is for the award of a revenue-generating development lease agreement for the Parks, Recreation and Open Spaces Department (PROS). The lease agreement is between Miami-Dade County (County) as landlord and Haulover Bay, LLC as Tenant, for the finance, design, construction, operation, maintenance, and management of a marina-front restaurant at the Bill Bird Marina located within Haulover Park. This project will enhance Haulover Park visitors' experience by providing quality food service while generating revenue to the County.

Recommendation
It is recommended that the Board of County Commissioners (Board) approve a competitive development lease award, *Contract No. EVN0000753, Haulover Marina-Front Restaurant*, to Haulover Bay, LLC with anticipated revenue to the County of $16,600,000 for the initial 20-year term and, should the two, ten-year options to renew be exercised, the estimated cumulative revenue to the County is projected to be over $53,000,000.

The resolution does the following:

1) Authorizes the lease of County-owned property, consisting of approximately 0.459 acres of land, to Tenant;
2) Authorizes the lease term of 20 years, with two, ten-year options to renew; and
3) Authorizes the County Mayor or County Mayor's designee to exercise all provisions in the Agreement that are not reserved by the Board, as described below in the Delegated Authority Section.

Background
A Request for Proposals was issued under full and open competition on February 2, 2024. On the closing date of April 30, 2024, the County received two proposals, both from local firms. Upon review of the proposals received, potential responsiveness issues from the two proposing entities were identified and a legal responsiveness review of the proposals was requested. On June 10, 2024, the County Attorney's Office (CAO) deemed one of the proposals non-responsive, as the proposer failed to include a price proposal. Evaluation meetings were conducted between July 8, 2024 and July 24, 2024. A copy of the Coordinator's Report is attached.

Multiple negotiation meetings were conducted between August 2024 and August 2025 to negotiate the final contract terms and payments to the County, and to finalize the conceptual site plan design. The negotiation phase was lengthy, as the County and the recommended Tenant considered multiple conceptual site plan designs to ensure the final project is in compliance with the requirements of Article 7 (Parks, Aquatic Preserves, and Preservation Lands) of the Miami-Dade County Home Rule Amendment and Charter.

This development is intended to replace a previous restaurant that was located on the west side of Haulover Park, adjacent to the Bill Bird Marina. For over twenty years, PROS operated a restaurant at

Haulover Park through a variety of operators. The previous restaurant and associated public restrooms were located on a 11,900 square foot site and included a 9,671 square foot restaurant building. The previous restaurant was demolished in 2009 due to structural issues related to a fire. Re-establishment of food service operations at the Bill Bird Marina has been a long-time goal for PROS and a part of the overall Park General Plan vision. This development is proposed in a manner compliant with Article 7 of the Miami-Dade County Home Rule Amendment and Charter and other land use restrictions.

Scope

The development site is located in County Commission District 4, which is represented by Commissioner Micky Steinberg. In accordance with Resolution No. R-1097-24, written notice of the lease was provided to the District Commissioner.

Fiscal Impact/Funding Source

There will be a positive fiscal impact to the County for the initial 20-year term in the estimated amount of $16,600,000. Should the Tenant and the County exercise the two, ten-year options to renew, the estimated cumulative revenue to the County is projected to be over $53,000,000. This amount is based on an initial monthly rent during the development phase escalated 3% yearly and, thereafter, a guaranteed annual rent escalated 3% yearly and payment to the County of a percentage of annual gross revenue throughout the operations phase.

Department	Projected Revenue	Funding Source	Contract Manager
PROS	$53,000,000	Revenue Generating	Gina Drakes

Track Record/Monitor

Saba Musleh of the Strategic Procurement Department (SPD) is the Negotiator. Gina Drakes, Interim Chief of Performance Excellence, PROS, will manage the overall terms and conditions of the Lease.

Delegated Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to: (a) execute the lease agreement between the County and Tenant, (b) exercise all provisions in the lease agreement that are not reserved by the Board, including, but not limited to, termination provisions; (c) execute all amendments, renewals, or extensions of the lease agreement; (d) review and approve documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to the County pursuant to the lease agreement; (e) consent to actions, events, and undertakings by the Tenant for which consent is required by the County; (f) make appointments of individuals or entities required to be appointed or designated by the County in the lease agreement; (g) execute any and all documents on behalf of the County necessary or convenient to the foregoing approvals, consents, and appointments; (h) execute on behalf of the County any and all consents, agreements, applications or other documents, needed to comply with applicable regulatory procedures or other approvals needed to accomplish the construction and all improvements of the project; and (i) amend the lease agreement to correct any typographical or non-material errors, to address revisions or supplements thereto of a non-material nature or to carry out the purposes of the lease agreement.

Vendor Recommended for Award

The highest-ranked proposer is recommended in accordance with the method of award per the solicitation and is local.

Vendor	Principal Address	Local Address	Number of Employee Residents 1) Miami-Dade 2) Percentage*	Principal
Haulover Bay, LLC	4770 Biscayne Blvd Suite 680 Miami, FL	Same	2 100**%**	Kosmas A Kalas

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendor Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
US South Engineering and Testing Lab, Inc.	Yes	Deemed non-responsive by the CAO (opinion attached)

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Applicability of Ordinances and Contract Measures

- The two percent User Access Program does not apply.
- The Small Business Enterprise Selection Factor and Local Preference applied.
- The Living Wage Ordinance does not apply.
- The Responsible Wages and Benefits Ordinance applies.

Attachment

Roy Coley

Roy Coley
Chief Utilities and Regulatory Services Officer

Memorandum

Date: August 1, 2024

To: Namita Uppal, C.P.M.
Director and Chief Procurement Officer
Strategic Procurement Department

Thru: Rita Silva, CPPO RS
Division Director, P3 and Innovative Procurement
Strategic Procurement Department

From: Saba Musleh, CPPB Saba Musleh
Selection Committee Coordinator

Subject: Report of Competitive Selection Committee for RFP No. EVN0000753, Haulover Marina-Front Restaurant

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The Strategic Procurement Department issued a competitive Request for Proposals on February 2, 2024 on behalf of Miami-Dade Parks, Recreation and Open Spaces Department (PROS) to obtain proposals from qualified firms to develop, finance, design, construct, operate, maintain, and manage a marina-front restaurant at Haulover Park. The County anticipates awarding a contract for 20 years, with two (2), additional 10-year option to renew periods, to be exercised at the County's sole discretion.

On April 30, 2024, two proposals were received in response to the solicitation. The Competitive Selection Committee (Committee) has completed the evaluation of the responsive proposal following the guidelines published in the solicitation. *Implementing Order No. 3-34, Formation and Performance of Competitive Selection Committees* and *Implementing Order No. 2-13, Guidelines and Procedures Regarding Legal Opinions,* establish certain timeframes for the completion of reviews and receipt of information during the evaluation phase. Compliance with timeframes is included for each section below where applicable.

Competitive Selection Committee meeting dates:
July 8, 2024 (Kick-off)
July 24, 2024 (Evaluation, Scoring and Recommendation)

Verification of compliance with contract measures:
A Small Business Enterprise selection factor was assigned to this solicitation. None of the proposers qualified.

Verification of compliance with minimum qualification requirements and responsiveness:
The solicitation had minimum qualification requirements which were reviewed by the Selection Committee Coordinator and the client department. The responsive proposer met the requirements.

On May 7, 2024, the proposal from US South Engineering & Testing was forwarded to the County Attorney's Office (CAO) for review. The CAO responded on June 10, 2024 and deemed the proposal non-responsive for failure to provide a financial proposal in accordance with the solicitation requirements. A copy of the CAO's opinion is attached. The CAO needed more than 30 calendar days to provide an opinion to consider, research and discuss responsiveness issues.

Local Certified Veteran's Business Enterprise Preference:
Veteran's Preference was considered. None of the proposers qualified for the preference.

Office of the Inspector General (OIG) and/or Commission on Ethics and Public Trust (COE) Reports, Findings and/or Enforcement Documentation for Proposer and Subcontractor(s):
Staff submitted a request to OIG and COE on July 2, 2024. A response was received from the OIG on July 2, 2024 and the COE on July 5, 2024 advising that no reports were found.

Office of the Commission Auditor (OCA) Background Check:
On July 8, 2024, staff provided Committee members with the Neutrality Affidavits, along with the list of proposers and subcontractors, to complete. This was not within 10 calendar days from the receipt of proposals. The time was needed to ensure receipt of the responsiveness opinion, so that only the proposer and subcontractor(s) from the responsive proposal would be considered. Staff submitted Committee member's completed Neutrality Affidavits and Resumes to OCA on July 12, 2024, and submitted supplemental information on July 19, 2024 . A response from OCA was received on July 22, 2024. No conflicts of interest were identified.

Summary of scores:
The Committee conducted scoring in accordance with the criteria outlined in the solicitation. The Committee decided not to hold oral presentations. The final scores are as follows:

Proposer	***Technical Score*** *(max. 2,550)*	***Financial Score*** *(max. 450)*	***Total Combined Score*** *(max. 3,000)*
Haulover Bay, LLC	2,315	410	2,725

Upon review of scores, there were no variances identified that exceeded 33% of the average score by all Committee members by criteria. The Financial Score is based on proposed rent and percentage of gross revenue to the County.

Local Preference:
Local Preference was considered, but did not affect the outcome as there was only one responsive proposer.

<u>Administrative Leave Eligibility</u>:
The following County employees served as scoring members of the Committee and timely completed all committee-related duties, including submittal of the Neutrality Affidavit within three business days from Selection Committee Coordinator's notification; initial scoring within 30 calendar days of Selection Committee Coordinator's completion of required reviews; and are hereby entitled to one (1) day of paid administrative leave pursuant to Implementing Order No. 3-34.

Employee's Name	**Employee's Department**
Andrew Warburton	PortMiami
Joseph Marcelin	Miami-Dade Water & Sewer
Mahe Brunet	PROS

Negotiations:
The Committee recommends that the County enter into negotiations with the highest ranked proposer, Haulover Bay, LLC. The following individuals will participate in the negotiations:

Saba Musleh, CPPB, Negotiator, Strategic Procurement Department
Joe Cornely, Assistant Director, PROS
Devin Meheen, Assistant Director, PROS
Perry Perez, Chief PROS Division, PROS

Technical and operational assistance and feedback will be requested from appropriate staff as needed during the negotiation process.

Consensus Statement: The Committee has unanimously determined that Haulover Bay, LLC has the experience and qualifications to develop, design, construct, operate, maintain, and manage the restaurant and has the economic capability to ensure successful completion of the project. Haulover Bay, LLC's financial proposal provided the County with the solicitation's recommended minimum compensation and proposed above such recommended minimums for percentage of annual gross revenues.

Copies of the score sheets are attached for each Committee member, as well as a composite score sheet. Your approval of the Committee's recommendation is requested.

Approved

Rita Silva 8/6/24

for Namita Uppal, C.P.M. Date
Director and Chief Procurement Officer

Memorandum MIAMI-DADE COUNTY

Date: June 10, 2024

To: Saba Musleh, CPPB
Negotiator
Strategic Procurement Department

From: Sophia Guzzo
Assistant County Attorney

Subject: Request for Responsiveness Determination RFP No. EVN0000753 – Haulover Marina Front Restaurant (the "Solicitation")

You have asked this office if two proposals received in response to the Solicitation are responsive. In providing this opinion, I rely on the information provided in your May 7, 2024 memorandum, the Solicitation documents, including the request for proposals and the tabulation packet, and both proposers' proposals.

Based on the relevant documents and for the reasons detailed below, US South Engineering & Testing is nonresponsive and Haulover Bay, LLC is responsive.

FACTS

The Solicitation seeks proposals to finance, design, construct, develop, operate and maintain a marina-front restaurant at Haulover Park. US South Engineering & Testing ("US Engineering") and Haulover Bay, LLC ("Haulover Bay") both provided timely responses to the Solicitation.

Section 4.2 of the Solicitation provides the Evaluation Criteria. These criteria include technical criteria such as the proposer's experience, qualifications, and approach to designing, building, operating managing and maintaining the restaurant, as well as financial criteria, including the proposer's proposed rent.

The Proposal Submission Package, attached to the Solicitation, includes a document titled Attachment 1 – Proposer Information Section and Proposed Rent ("Attachment 1"). Attachment 1, Section E states the following:

> The Proposer shall submit the proposed Initial Rent, Guaranteed Annual Rent, and Percentage of Annual Gross Receipts in the boxes below. **No exceptions are permitted in this section.**

Section B (21) of Attachment 1 also requests that proposers:

> Provide the required OSHA forms per Resolution R-1181-18 for examination by the Technical Advisor of the Selection Committee. Attach information identifying the Experience Modification Rate (EMR) and OSHA forms 300 and 300A for the past five (5) years for the proposed Builder.

Attachment 1, Section B (14) further directs the proposer to "[p]rovide the completed Form A – Design and Construction Budget Worksheet." The Form A – Design and Construction Budget Worksheet is Attachment 5 to the Proposal Submission Package and provides a chart for proposers to fill out with the proposer's yearly costs and total budget for design and construction work.

US Engineering submitted a proposal without any of the information requested in Attachment 1, including no proposed rent. Haulover Bay submitted a proposal containing a Design and Construction Budget Worksheet that left some entries blank. Haulover Bay's proposal also contained a letter from its lender stating that the proposal is "strictly confidential" and that the "Borrower may not disclose any information in any way relating to the same without the prior written consent of the Bank." Haulover Bay's proposal also contains none of the OSHA forms requested under Section B (21) of Attachment 1.

DISCUSSION

Under Florida law, a bid or proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. *See Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable, issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. *See Glatstein v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA 1981).

US Engineering

US Engineering is nonresponsive. Its proposal fails to provide a proposed Initial Rent, Guaranteed Annual Rent, and Percentage of Annual Gross Receipts in accordance with the Solicitation's requirements. It lacks any of the submission information needed for the County to compare the proposal to other submissions according to the Solicitation's Evaluation Criteria and, because it contains no proposed price, deprives the County of the assurance that the contract would be entered into and performed in accordance with the Solicitation.

Haulover Bay, LLC

Haulover Bay's proposal is responsive. The Design and Construction Budget Worksheet provides information on Haulover Bay's proposed budget for the Solicitation, but leaves certain entries blank. This does not constitute a material variance from the Solicitation; instead, any missing information will be evaluated towards Haulover Bay's responsibility, not the responsiveness of its proposal.

Moreover, Haulover Bay's failure to provide OSHA forms goes towards responsibility, not responsiveness, as these forms pertain to Haulover Bay's safety history as a construction operator. *See* Miami-Dade County Implementing Order 2-13 ("In general, solicitation requirements for information relating to a bidder or proposer's financial condition, capability, experience, and past performance pertain to responsibility. … A bidder or proposer need not demonstrate compliance with solicitation requirements pertaining to its responsibility in order for its bid or proposal to be deemed responsive and evaluated. Information regarding a bidder or proposer's responsibility may be furnished up to the time or award.").

Lastly, the confidentiality language in the letter from Haulover Bay's lender contained Haulover Bay's proposal does not render the proposal nonresponsive. Haulover Bay, in its Proposal Submittal Form, signed a "Waiver Of Confidentiality and Trade Secret Treatment of Proposal" which acknowledged that the proposal is a public record and contains no confidential information. Therefore, there is no responsiveness issue with the confidentiality language contained in Haulover Bay's proposal.

CONCLUSION

In conclusion, based on the facts above, US Engineering's proposal is nonresponsive, and Haulover Bay, LLC's proposal is responsive.

Sophia Guzzo

Sophia Guzzo, Assistant County Attorney

RFP No. EVN0000753
HAULOVER MARINA-FRONT RESTAURANT
EVALUATION OF PROPOSALS

COMPOSITE

EVALUATION CRITERIA / PROPOSERS	Maximum Points Per Member	Maximum Total Points (3 members)	HAULOVER BAY, LLC
Executive Summary, Experience, and Qualifications	250	750	690
Proposer's Approach to Designing and Building the Restaurant	200	600	530
Proposer's Approach to Operating, Managing and Maintaining the Restaurant	200	600	575
Proposer's Economic Capability	200	600	520
Total Technical Points	**850**	**2550**	**2315**
Selection Factor *(10% of the Total Technical Points)*	**85**	**255**	**-**
Total *(Technical & Selection Factor)*	**935**	**2805**	**2315**
Proposed Rent	**150**	450	410
TOTAL POINTS	**1085**	**3255**	**2725**
Ranking			1

Signature: Saba Musleh 7/30/2024 Print Name: Saba Musleh

Coordinator

[signature] 7/30/2024 Print Name: Pablo Martinez

Reviewer

RFP No. EVN0000753
HAULOVER MARINA-FRONT RESTAURANT
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: MAHE BRUNET

EVALUATION CRITERIA / PROPOSERS	Maximum Points	HAULOVER BAY, LLC
Executive Summary, Experience, and Qualifications	250	**230**
Proposer's Approach to Designing and Building the Restaurant	200	**170**
Proposer's Approach to Operating, Managing and Maintaining the Restaurant	200	**195**
Proposer's Economic Capability	200	**150**
Total Technical Points	**850**	**745**
Proposed Rent	**150**	**140**
TOTAL POINTS	**1000**	**885**

RFP No. EVN0000753
HAULOVER MARINA-FRONT RESTAURANT
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: ANDREW WARBURTON

EVALUATION CRITERIA / PROPOSERS	Maximum Points	HAULOVER BAY, LLC
Executive Summary, Experience, and Qualifications	250	**220**
Proposer's Approach to Designing and Building the Restaurant	200	**170**
Proposer's Approach to Operating, Managing and Maintaining the Restaurant	200	**180**
Proposer's Economic Capability	200	**180**
Total Technical Points	**850**	**750**
Proposed Rent	**150**	**130**
TOTAL POINTS	**1000**	**880**

RFP No. EVN0000753
HAULOVER MARINA-FRONT RESTAURANT
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: JOSEPH MARCELIN

EVALUATION CRITERIA / PROPOSERS	Maximum Points	HAULOVER BAY, LLC
Executive Summary, Experience, and Qualifications	250	**240**
Proposer's Approach to Designing and Building the Restaurant	200	**190**
Proposer's Approach to Operating, Managing and Maintaining the Restaurant	200	**200**
Proposer's Economic Capability	200	**190**
Total Technical Points	**850**	**820**
Proposed Rent	**150**	**140**
TOTAL POINTS	**1000**	**960**

MEMORANDUM
(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: December 2, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(3)

Please note any items checked.

_______ **"3-Day Rule" for committees applicable if raised**

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

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

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

_______ **Budget required**

_______ **Statement of fiscal impact required**

_______ **Statement of social equity required**

_______ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_______ **No committee review**

_______ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, majority plus one ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3) (h) or (4)(c) ____, CDMP 9 vote requirement per 2-116.1(4)(c) (2) ____) 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(P)(3)
12-2-25

RESOLUTION NO. R-1163-25

RESOLUTION, IN ACCORDANCE WITH SECTION 125.35, FLORIDA STATUTES, APPROVING OF THE AWARD AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, AS THE LANDLORD, AND HAULOVER BAY LLC AS THE TENANT, FOR HAULOVER MARINA-FRONT RESTAURANT WITH AN INITIAL LEASE TERM OF 20 YEARS WITH TWO, TEN-YEAR OPTIONS TO RENEW, AND PROJECTED REVENUE TOTALING APPROXIMATELY $53,000,000.00 FOR A LONG TERM LEASE OF APPROXIMATELY 0.459 ACRES OF COUNTY-OWNED PROPERTY FOR THE PARKS, RECREATION AND OPEN SPACES DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING TERMINATION AND AMENDMENT PROVISIONS

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:

Section 1. This Board, in accordance with section 125.35, Florida Statutes, approves the award of and authorizes the County Mayor or County Mayor’s designee to execute a Lease Agreement (“Lease”), between Miami-Dade County (“County”), as Landlord, and Haulover Bay LLC (“Tenant”), in substantially the form attached hereto and incorporated herein by reference, with an initial lease term of 20 years with two, ten-year options to renew, and projected revenue totaling approximately $53,000,000.00 for the Parks, Recreation and Open Spaces Department pursuant to Solicitation No. EVN0000753, Haulover Marina-Front Restaurant. Due to its volume, the exhibits to the agreement are not attached, but the complete agreement, including all appendices, is available upon request from the Strategic Procurement Department.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to: (a) execute the lease agreement between the County and Tenant, (b) exercise all provisions in the lease agreement that are not reserved by the Board, including, but not limited to, termination provisions; (c) execute all amendments, renewals, or extensions of the lease agreement; (d) review and approve documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to the County pursuant to the lease agreement; (e) consent to actions, events, and undertakings by the Tenant for which consent is required by the County; (f) make appointments of individuals or entities required to be appointed or designated by the County in the lease agreement; (g) execute any and all documents on behalf of the County necessary or convenient to the foregoing approvals, consents, and appointments; (h) execute on behalf of the County any and all consents, agreements, applications or other documents, needed to comply with applicable regulatory procedures or other approvals needed to accomplish the construction and all improvements of the project; and (i) amend the lease agreement to correct any typographical or non-material errors, to address revisions or supplements thereto of a non-material nature or to carry out the purposes of the lease agreement.

Section 3. This Board directs the County Mayor or County Mayor's designee to provide to the Property Appraiser's Office executed copies of the ground leases, sub-ground leases and operating agreements within 30 days of their execution.

Section 4. This Board directs the County Mayor or County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the lease or memorandum of lease, sub-ground leases or memoranda of sub-ground leases, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board further directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Kionne L. McGhee** and upon being put to a vote, the vote was as follows:

Anthony Rodriguez, Chairman **aye**
Kionne L. McGhee, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Sen. René García	**aye**	Oliver G. Gilbert, III	**aye**
Roberto J. Gonzalez	**absent**	Keon Hardemon	**aye**
Danielle Cohen Higgins	**aye**	Vicki L. Lopez	**aye**
Natalie Milian Orbis	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**absent**		

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of December, 2025. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MRP

Melanie J. Spencer
Monica Rizo Perez

Lease No.: EVN0000753

Haulover Marina-Front Restaurant

DEVELOPMENT LEASE AGREEMENT

BETWEEN

MIAMI-DADE COUNTY, FLORIDA,

AS LANDLORD

AND

HAULOVER BAY, LLC,

AS TENANT

TABLE OF CONTENTS

Lease No. EVN0000753

Doc. Name: Haulover Marina-Front Restaurant

DEVELOPMENT LEASE AGREEMENT

THIS DEVELOPMENT LEASE AGREEMENT (this "**Agreement**") is made and entered into as of the ___________day of _____, 2025 ("**Commencement Date**"), by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("**County**" or "**Landlord**") and HAULOVER BAY, LLC ("**Tenant**" or "**Lessee**").

WITNESSETH

WHEREAS, the Landlord is the owner of the Premises (as hereinafter defined) which is located on park property commonly known as Haulover Park located at 10800 Collins Avenue in in Miami-Dade County, Florida; and

WHEREAS, the County issued Request for Proposals No. EVN0000753 to solicit proposals for a tenant to design, build, finance, operate and maintain a Haulover Marina-Front Restaurant; and

WHEREAS, the Tenant has submitted a written proposal dated April 26, 2024 (the "Tenant's Proposal") which is incorporated herein by reference; and

WHEREAS, the Tenant desires to develop the Premises with certain Improvements (as hereinafter defined) pursuant to the terms and conditions of this Agreement for and in support of the Marina-Front Restaurant and to operate same for park patrons in support of outdoor recreation and leisure opportunities for the community as a whole, all subject to the terms and conditions of this Agreement; and

WHEREAS, Landlord desires to have Tenant develop the Premises, and desires to have the Improvements and Premises operated and used to enhance and benefit the County and park patrons, in support of outdoor recreation and leisure opportunities for the community as a whole,

NOW THEREFORE, for and in consideration of the covenants and agreements hereinafter contained to be performed and observed by the Landlord and Tenant, and in further consideration of other good and valuable consideration, the Landlord and Tenant agree that:

SECTION 1
Defined Terms

1.1 "**Affiliate**" or "**Affiliates**": Any entity that has the power to control the Tenant, an entity that is controlled by Tenant, or an entity which, along with Tenant, is under common control or ownership by a third-party. An Affiliate exists because of interlocking directorates or ownership and may exist because one entity is a subsidiary of another.

1.2 "**Alternative Security**": has the meaning set forth in **Section 9.4.2** (Alternative Security).

1.3 "**APP**": has the meaning set forth in **Section 9.10** (Art in Public Places).

1.4 "**Applicable Law**": means any applicable law, statute, code, ordinance, administrative order, implementing order, charter, resolution, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit or license, of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued.

1.5 "**Applicable Measures**": has the meaning set forth in **Section 9.8** (Small Business Enterprise and Workforce Initiatives).

1.6 "**Bankruptcy Law**": shall mean United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto.

1.7 "**Bankruptcy-Related Event**": shall mean, in respect of the Tenant any of the following events under the Bankruptcy Law: (i) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Tenant ; (ii) any proceedings with respect to the Tenant being commenced under the Bankruptcy Law and if such proceedings are commenced against the Tenant and are disputed by the Tenant such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within sixty (60) days of such proceedings being instituted; or (iii) the Tenant making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Tenant under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Tenant and are disputed by the Tenant such proceedings are not stayed, dismissed or otherwise remedied within sixty (60) days of such proceedings being instituted.

1.8 **"Beverage or Beverages"** means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral, purified, flavored or enhanced), (viii) liquid concentrate teas and brewed teas, (ix) frozen carbonated and non-carbonated beverages, (x) bar mixers, including shelf stable juices and other mixers, and (xi) any future categories of nonalcoholic beverage products that may be distributed. Note: The definition of Beverage(s) is undergoing continued updates and is subject to change.

1.9 "**Board of County Commissioners**": The Board of County Commissioners of Miami-Dade County, Florida.

1.10 "**Business Day**": A day (a) that is not a day that is defined by Section 110.117, Fla. Stat. or (b) on which the New York Stock Exchange and national banks are open for business.

1.11 "**Casualty**": Any extreme and material damage or destruction not caused by the negligence or willful conduct of Tenant affecting any or all buildings and improvements, whether or not insured or insurable, so as to render the Improvements thereon completely inoperable or unusable as reasonably determined by the County for a period of time of thirty (30) days or longer.

1.12 "**Claims**": Any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including, without limitation, and interest.

1.13 "**CO**": Any final or permanent certificate of occupancy issued by the applicable Governmental Authority for the Improvements.

1.14 "**Code**": The Miami-Dade County Code, as modified from time to time.

1.15 "**Commencement of Construction**": shall mean the later of (a) the filing of the notice of commencement under Florida Statutes, Section 713.13 and (b) the visible start of construction work on the applicable area, including on-site utility, excavation or soil stabilization work (but specifically excluding any necessary testing or ceremonial groundbreaking). In order to meet the definition of "**Commencement of Construction**" the filing of the notice of commencement and visible start of work must occur after Tenant has secured the necessary building permit for the work and the County has issued the notice to proceed to the Tenant for the horizontal improvements.

1.16 "**Commencement Date**": The date set forth on the first page of this Lease above, after approval by the Board of County Commissioners, See Section 2.1 for more information.

1.17 "**Completion Deadline**": The date on or before which the Tenant must have obtained Substantial Completion of the Improvements, which shall be on or before the date that is 54 months of the Commencement Date. (i.e. if the Commencement Date is December 1, 2025, the Completion Deadline shall be June 1, 2030).

1.18 "**Conceptual Site Plan(s)**": The conceptual site plan submitted by Tenant to Landlord for the Improvements as may be amended from time to time upon approval by the County Representative. The initial draft of the Conceptual Site Plan submitted by the Tenant to the County is attached as **Exhibit "F"** and shall serve as a base draft for initial planning and preparation of the Plans and Specifications.

1.19 "**Condemnation**": Any temporary or permanent taking of (or of the right to use or occupy) the Premises by condemnation, eminent domain, or any similar proceeding.

1.20 "**Condemnation Award**": Any award(s) paid or payable (whether or not in a separate award or collectively) to either Party or the Lender, if applicable, after the Commencement Date because of, or as compensation for, any Condemnation, including: (a) any award made for any Improvements that are the subject of the Condemnation, (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation.

1.21 "**County**": Miami-Dade County, a political subdivision.

1.22 "**County Representative**": The County Mayor or his/her designee.

1.23 "**DERM**": a division of the Miami-Dade County Department of Regulatory and Economic Resources (formerly referred to as the Department of Permitting, Environment and Regulatory Affairs, which was formerly referred to as the Department of Environmental Resources Management).

1.24 "**Design Criteria Package**" shall mean the County's minimum requirements and specifications for the development, design and construction of the Improvements and the Premises and is attached as **Exhibit "B"**.

1.25 "**Development Builder**" to mean the lead person for the Tenant's builder, general contractor and all subcontractors that will perform the building and construction of the Improvements.

1.26 "**Due Diligence Period**":. shall mean 90 days following the Commencement Date See Section 7 for more information

1.27 "**Encumbrances**": Mechanics liens or materialman's liens, or liens, judgments or encumbrances of any kind.

1.28 "**Environmental Law**": Any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial or agency interpretation of any of the foregoing, that pertains to any Hazardous Material, or the environment (including, but not limited to, ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 41 U.S.C. § 300f et seq.; the Florida Resource Recovery and Management Act: the Water Control Assurance Act of 1983; the Florida Resource Conservation and Recovery Act: the Florida Air and Water Pollution Control Act; the Florida Safe Drinking Water Act; the Pollution Spill Prevention and Control Act; and the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., as any of the foregoing now exist or may be changed or amended to come into effect in the future.

1.29 "**Final Completion**": Point in time when (a) a final Certificate of Occupancy has been obtained for the Improvements and (b) the Tenant's architect or engineer issues a certificate to the Landlord confirming such Improvements have been constructed substantially in accordance with the applicable Plans and Specifications therefor and that all punch list items have been remedied. Final Completion shall occur on or before the date that is ninety days following Substantial Completion.

1.30 "**Financing**": has the meaning set forth in **Section 10.1** (Construction Financing and/or Permanent Financing) herein.

1.31 "**Force Majeure**": Means the occurrence of any of the following events after the expiration of the Due Diligence Period that are not foreseeable or were not reasonably foreseeable by the Party claiming Force Majeure and that directly causes the Party claiming Force Majeure to be unable to comply with, or results in a delay in its performing, and without the fault and outside of the control of the Party claiming an inability to comply or delay in performing, all or a material part of its obligations under this Agreement and which, despite the exercise of due diligence, the Party claiming Force Majeure was unable to avoid: (a) act of the public enemy, quarantine restriction, pandemic (excepting COVID-19), wars, insurrection, hostilities, certified acts of terrorism as defined by the Terrorism Risk Insurance Act or any substantially similar law then in effect, riots, or revolutions or civil commotions; (b) strikes, lock-outs, or blockades (but only to the extent such actions do not result from an act or omission of the obligor); (c) freight embargoes, wide-spread and significant shortages of fuel, power, labor, materials or parts for which there is no other alternative; (d) epidemic, fire, wind, hurricanes, earthquake, unusually severe weather, or flood; (e) any act of God; or (f) any court orders, injunctions, temporary restraining orders, or other legal decisions directly and materially restricting or prohibiting the development of the Premises or any portion thereof.

1.32 "**GAAP**": The United States generally accepted accounting principles in effect from time to time.

1.33 "**Governmental Authority**": Each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises, including the United States government, the State and the County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "**Governmental Authority**" shall also include any planning commission, board of standards and appeals, department of building and zoning, city council, board of adjustment, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises, and/or any activities on or at the Premises.

1.34 "**Gross Revenues**": All revenues generated by, and actually received, in accordance with GAAP, by the Tenant from the operation, leasing, use or occupancy of the Premises, including but not limited to: (a) all food and beverage sales; (b) catering, banquet, bar, or restaurant services; (c) fees and rents received in connection with any rental, sublease, license, concession agreement, or occupancy agreement relating to the use, occupancy, management or operation of any portion of the Premises; (d) amounts received in connection with vending and coin operated machines, ATM machines, but excluding: (i) taxes imposed by law and paid by a customer and directly payable by such person, entity or trust to a taxing authority; (ii) credit card processing fees; (iii) any refunds or exchanges of merchandise by customers; (iv) sales of trade fixtures, machinery and equipment relating to the Improvements; (v) pass-through or reimbursable expenses paid by third parties through the Tenant to another third-party; and (vi) condemnation or casualty proceeds.

1.35 "**Gross Revenues Reporting Date**" shall mean the date that is on or before 90 days following each anniversary of the Rent Adjustment Date, i.e. if the Rent Adjustment Date is June 1, 2028, then the first Gross Revenue Reporting Date shall be August 30, 2029 and shall be on August 30th every year thereafter.

1.36 "**Hazardous Materials**": Any substance or related material, whether solid, liquid or gaseous, that is defined as "hazardous" or "toxic" or a term of similar import or is regulated as such under any Environmental Law, including any asbestos, radon, polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or fuel in violation of Environmental Laws and any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; or (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910.

1.37 "**Hours of Operation**" to mean the schedule as to when the Marina-Front Restaurant will be permitted to operate, which schedule is set forth in Section 6 of this Agreement.

1.38 "**Percentage of Annual Gross Revenues**": The percentage of annual gross Revenues payable as part of Rent for the Premises following Substantial Completion. See **Section 4.2** for more information.

1.39 "**Improvements**": means the Marina-Front Restaurant, the Public Restrooms along with all of the permanent infrastructure, buildings, fixtures, equipment, constructed, erected, installed or located on or within the Premises, including, without limitation, the restaurant or other food-service facility, boilers, compactors, compressors, conduits, ducts, fittings, utility and life safety systems, heating, ventilating and air conditioning systems, machinery, pumps; pipes and plumbing, , together with any replacements, alterations or repairs as required under this Agreement, as may be required or necessary for Tenant to operate the Premises for any of the Permitted Uses to be designed and constructed, or caused to be designed and constructed by Tenant. which must comply with Exhibit B – Design Criteria Package and any ADA restrictions that apply,

1.40 "**Indemnified Party**": Any Person entitled to indemnification pursuant to **Section 17** (Indemnification and Hold Harmless) or any other provision of this Agreement.

1.41 "**Indemnitor**": The Person obligated to indemnify any Indemnified Party pursuant to **Section 17** (Indemnification and Hold Harmless) or any other provision of this Agreement.

1.42 "**Initial Term**": The initial term of the Agreement with respect to the Premises, see **Section 2.1** for more information.

1.43 "**IPSIG**": has the meaning set forth in **Section 21.1.1** (Independent Private Sector Inspector General Reviews).

1.44 "**Initial Rent**": Initially, the annual amount contemplated in **Section 4.1** (Initial Rent).

1.45 "**Landlord**": Miami-Dade County, a political subdivision.

1.46 "**Landlord Default**": An event of default by the Landlord as described under **Section 19.3** (Landlord Default) of this Agreement.

1.47 "**Landlord Indemnified Parties**" has the meaning set forth in **Section 17.1** (Indemnification and Hold Harmless by Tenant).

1.48 "**Lease Year**": (a) The twelve (12) calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve (12) calendar months during the Term or such prorated period of time if the Term expires prior to the end of a period of twelve (12) calendar months.

1.49 "**Leasehold Estate**": Tenant's leasehold estate in the Premises, and all of Tenant's rights and privileges under this Agreement, including without limitation any expansion, extension, purchase, or renewal option rights contained herein, subject to the terms and conditions of this Agreement.

1.50 "**Leasehold Mortgage**": Any mortgage, collateral assignment, security instrument or other lien (as modified from time to time) granted by the Tenant and encumbering all or a portion of the Leasehold Estate, subject to the terms of **Section 10** (Financing) to all or a portion of the Premises, or any pledge of the indirect or direct equity interests of Tenant, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such mortgages or pledges are consolidated or restated as a single lien or held by the same Lender, then all such mortgages or pledges so consolidated or restated shall constitute a single Leasehold Mortgage. A Leasehold Mortgage shall not attach to the fee estate of the Landlord.

1.51 "**Lender**": Any lender, now or hereafter, of the Financing and/or any holder of a Leasehold Mortgage or any concurrent holder of a Leasehold Mortgage (and its and/or their respective successors and/or assigns).

1.52 "**<u>Guaranteed Annual Rent</u>**": rent payable pursuant to the terms set forth in **Section 4.2**.

1.53 "**<u>Maintenance and Repairs</u>**": All work, labor and materials required in the ordinary course of business to be performed and used to: (i) maintain in good, clean working order, and, repair as a result of ordinary wear and tear, the entire Premises, including, but not limited to, the lighting features, safety features, and all structures, components, systems, fixtures, landscaping, and furnishings contained therein, and (ii) conduct routine and preventative maintenance consistent with manufacturer-provided warranty, maintenance, cleaning and best engineering and facility management practices, including, but not limited to, performing or causing to be performed services which will at all times keep the Premises and Improvements clean, neat, orderly, sanitary and presentable taking into account the limitations of construction and removing or causing to be removed from the Premises and the Improvements, all trash and refuse which might accumulate and arise from Tenant's use of the Premises and the Tenant's business operations under this Agreement.

1.54 "**Marina-Front Restaurant**" shall mean that certain food and beverage establishment with indoor/outdoor dining and seating that caters primarily to the outdoor recreating public to be constructed by the Tenant on the Premises, inclusive of entry, kitchen, indoor dining, ancillary storage, offices and any other enclosed support spaces. The design standards must comply with Miami Moderne architectural style, as show in Exhibit B – Design Criteria Package.

1.55 "**<u>Marks</u>**": Any and all trademarks, service marks, copyrights, names, symbols, words, logos, colors, designs, slogans, emblems, mottos, brands, designations, trade dress, domain names and other intellectual property (and any combination thereof) in any tangible medium.

1.56 "**<u>Party</u>**" or "**<u>Parties</u>**": Individually, Tenant or Landlord, as applicable, or collectively, Tenant and Landlord.

1.57 "**<u>Permits</u>**": All permits, licenses, approvals and variances from applicable Governmental Authorities to permit Tenant to perform all of Tenant's Work and to construct, develop, manage and operate in the Premises and including without limitation, all building permits, storm water drainage permits, sanitary sewer permits, electric, gas, telephone and cable service and connections adequate for the operation of Premises, Signage permits, liquor licenses, TCOs, COs, consents, and other items required or desired by Tenant from all Governmental Authorities to permit Tenant to construct, develop, manage, operate and use the Premises for the Permitted Uses.

1.58 "**<u>Permitted Use</u>**": Any permitted use of the Premises by Tenant as described under **Section 5** (Permitted Use) of this Agreement.

1.59 "**<u>Persistent Tenant Default</u>**": shall have the definition set forth in Section 19 of this Agreement.

1.60 **"Pouring Rights"** means the right to make available, sell, dispense, and serve Beverages, which right may or may not be to the exclusion of certain Beverage makers and distributers.

1.61 "**Plans and Specifications**": The drawings, designs, constructions documents, and specifications prepared by the Tenant's architects, contractors and/or engineers that show the location, characters, dimensions and details of the Improvements, as applicable, as same may be modified or amended from time to time pursuant to the terms of this Agreement, provided that the Plans and Specifications adhere at all times to the Design Criteria Package and the Conceptual Site Plan. Plans and Specifications include the 50% completed design and construction plans and documents and the 100% completed design and construction plans and documents ready for permitting.

1.62 "**Pre-Existing Environmental Conditions**": Any Hazardous Materials affecting the Premises that are required to be protected, removed or remediated pursuant to Applicable Laws, refer to **Section 13.5** which provides more information on pre-existing conditions.

1.63 "**Premises**": (i) The real property located in Miami-Dade County and generally described and depicted on **Exhibit "A"** attached hereto, consisting of approximately 0.459 acres, subject to Survey, (ii) the Improvements now or hereafter existing or constructed thereon, and (iii) all of the Tenant's rights, privileges, licenses, easements and appurtenances thereon. "Premises" does not include the subsurface minerals or the right to extract or mine any portion thereof nor does it include the right to transfer or convey any development rights associated with the Premises to any third party for the benefit of another parcel of real property.

1.64 **"Proposal"** shall mean the a written proposal dated April 26, 2024 submitted by Tenant to the County for development of the Improvements, provision of Services and lease of the Premises which is attached hereto as **Exhibit "I"**.

1.65 "**Public Restrooms**" shall mean a public restroom adjacent or incorporated into the Marina-Front Restaurant, and which must have an independent entry and exit by Park patrons so as not to have to enter the Marina-Front Restaurant to use the restroom. The design standards of the Public Restrooms must conform to the Miami Moderne architectural style, as show in Exhibit B – Design Criteria Package.

1.66 "**Rent**": The Initial Rent, the Percentage of Annual Gross Revenues, and/or the Guaranteed Annual Rent as one or more may be applicable from time to time.

1.67 "**Rent Adjustment Date**": shall mean the date that Tenant begins paying the Guaranteed Annual Rent and no longer pays the Initial Rent, which date shall be the earlier of: (a) the occurrence of Substantial Completion of any of the Improvements; or (b) the Completion Deadline.

1.68 "**Rent Adjustment Year**": (a) The twelve (12) calendar months starting on the Rent Adjustment Date; and (b) every subsequent period of twelve (12) calendar months during the

Term commencing on the anniversary of each Rent Adjustment Date or such prorated period of time if the Term expires prior to the end of a period of twelve (12) calendar months.

1.69 "**Renewal Term**": If properly exercised by Tenant pursuant to **Section 2.1.2** (Renewal Term), one of two available extensions of the term of the Initial Term of this Agreement for ten (10) years being referred to as a "**Renewal Term**".

1.70 "**Restoration**": the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Casualty, subject to such construction as Tenant shall perform in conformity with this Agreement and subject to any changes in Applicable Law that would limit the foregoing.

1.71 "**SBD**": has the meaning set forth in **Section 9.8** (Small Business Enterprise and Workforce Initiatives).

1.72 "**SBE**": has the meaning set forth in **Section 9.8** (Small Business Enterprise and Workforce Initiatives).

1.73 "**Security Deposit**": The payment of $25,000 by the Tenant to the County as a condition of the Agreement, redeemable upon termination of the Agreement.

1.74 "**Services**": mean all the actions to be performed, services to be provided, and goods sold by Tenant under this Agreement, which is more specifically set forth in **Section 5.**

1.75 "**Signage**": All signage (whether permanent or temporary) in or on the Premises, including video screens, directional signage, banners, fascia boards, displays, message centers, advertisements, signs and marquee signs.

1.76 "**State**": The State of Florida.

1.77 "**Sublease**": For the Premises, (a) a sublease or any further level of subletting; (b) any agreement or arrangement (including a concession, license, or occupancy agreement) allowing any entity to occupy, use or possess all or any portion of the applicable Premises for a period longer than seven (7) consecutive days or more than fourteen (14) days in any six-month period; or (c) any amendment or modification to the agreements described in the foregoing clauses (a) or (b).

1.78 "**Substantial Completion**": means the stage in the progress of the construction of the Improvements when the construction of each is sufficiently completed, subject to minor, punch-list type work remaining, in accordance with the terms of this Agreement and the approved Plans and Specifications, so that the Tenant can beneficially occupy the Improvements and be open to provide Services to the public, and the Restroom is open for use and service to the public, all as evidenced by receipt of a TCO for the Improvements.

1.79 "**Survey**": Any ALTA survey of the Premises prepared by a licensed surveyor selected by the Tenant and approved by the County, and which shall be certified to the County, the Tenant, the Tenant's title company, if any, and to the extent provided prior to the issuance of such survey, the Lender.

1.80 "**Tax**": Any general or special, ordinary or extraordinary, tax, imposition, assessment, levy, usage fee, excise, deduction, withholding or similar charge, however measured, regardless of the manner of imposition or beneficiary, that is imposed by any Governmental Authority and any and all liabilities (including interest, fines, penalties or additions with respect to any of the foregoing) with respect to the foregoing.

1.81 "**TCO**": Any temporary certificate of occupancy issued by the applicable Governmental Authority for the Improvements.

1.82 "**Tenant**": Haulover Bay, LLC, and any successors and/or assigns thereof.

1.83 "**Tenant Default**": An event by Tenant as described under **Section 19.1** (Tenant Defaults) of this Agreement.

1.84 "**Term**": The Initial Term, and, to the extent exercised, any Renewal Term, and subject to any earlier termination or extensions as set forth in this Agreement.

1.85 "**Termination Date**": The date when this Agreement terminates or expires in accordance with its terms, whether on the expiration thereof or by Tenant's or Landlord's exercise of its rights hereunder (including any extensions as a result of any Renewal Terms), or otherwise.

1.86 "**Transfer**": An assignment, sale (including any sale of stock), or transfer of all of Tenant's right, title and interest in and to this Agreement, a sublease of any portion thereof or a Leasehold Mortgage, whether permitted or requiring the consent of the Landlord.

1.87 "**Work**": All labor, materials, tools, equipment, services methods, procedures, etc., necessary or convenient to performance by Tenant or any of its designees for the fulfillment of Tenant's obligation to construct the Improvements and to provide the Services in accordance with the terms of this Agreement.

SECTION 2
Term

2.1 Term

2.1.1 Initial Term. As of the Commencement Date and during the Term, Landlord hereby leases, demises and lets to the Tenant, and the Tenant hereby leases from the Landlord, through this Agreement, the Premises to provide the Services and in accordance with the Permitted Uses set forth in **Section 5** (Permitted Uses) and subject to the right of the County and the general public to access and use the Public Restrooms during the Hours of Operation. The Initial Term shall commence on the Commencement Date and shall terminate on the date that is twenty (20) years after the Commencement Date, unless otherwise extended or sooner terminated as set forth herein. The Initial Term and any subsequent Renewal Term may be extended pursuant to **Section 2.1.2** (Renewal Term) below.

2.1.2 Renewal Term. The Tenant shall have the right, but not the obligation, to request the extension of the Initial Term on the same terms and conditions set forth in this Agreement for two (2) renewal terms of ten (10) years each. The Tenant may exercise its right to request an extension of the Initial Term or applicable Renewal Term by delivering written notice of such exercise to the Landlord no later than one (1) year prior to the expiration of the Initial Term or the then applicable Renewal Term, but in any event, not earlier than the date that is three (3) years prior to the expiration of the Initial Term, or then applicable Renewal Term and Landlord shall be required to agree, in writing and in the Landlord's sole discretion, to the renewal term in order for it to be effective. Provided that no Persistent Tenant Default has occurred during the Initial Term, or any Renewal Term thereto, and no Tenant Default is continuing at the time of Tenant's extension request, Landlord shall grant such extension upon Tenant's timely request.

SECTION 3
Premises

3.1 **Possession and Acknowledgments**. Except as otherwise provided in this Agreement, the rights, powers, privileges, uses, and benefits conveyed and granted to the Tenant pursuant to the terms, covenants, and conditions hereof, and the duties, covenants, and obligations of the Tenant hereunder shall be exclusive to the Tenant, solely with respect to the Premises leased hereunder, and shall not be granted by the County after the Commencement Date, with respect to any of the Premises, to any third party; provided however, that: (a) the Public Restrooms and the use thereof shall, notwithstanding its placement within the Premises, be non-exclusive to the Tenant and its employees and invitees and shall be open and available to be used by the County and the public during all Hours of Operation; and (b) nothing herein shall be construed to limit or impede the County's rights to grant the use of any other County real property at the park where the Premises are located or at any other County-owned or controlled property to any entity other than Tenant for uses or improvements that are the same or similar to those at the Premises or that are granted to Tenant pursuant to this Agreement. Throughout the Term of this Agreement, the County has and will retain fee simple title to the Premises. Subject to the terms and conditions of this Agreement, the Premises shall be leased to Tenant, and Tenant acknowledges and agrees to accept the Premises, with any and all faults, and subject to any and all obligations, restrictions, covenants, easement, and reservations that now exist (or that may exist after the Commencement Date with Tenant's consent) whether noted in the public records or not. Notwithstanding anything contained in this Agreement to the contrary, the County makes no representations, warranty, guarantee or averment of any nature whatsoever concerning the existence of any easements, restrictions, covenants, or any other recorded encumbrances to or upon the Premises and Tenant understands and agrees that the Premises are being leased to Tenant "as-is" and subject to any and all existing easements, restrictions, covenants or other encumbrances.

3.2 **Suitability of Premises**. The County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises or its suitability for the uses contemplated by the Tenant, and the County shall have no responsibility for installation or maintenance of any utilities that Tenant may need or desire for its development and use of the Premises, except to the extent that the County's consent is required in connection with the installation or maintenance of any utilities. The County will not be responsible for any cost, loss, or damage which may be necessary or incurred by the Tenant to make the Premises suitable for the Tenant's use.

3.3 **Cooperation**. Landlord agrees to join in and reasonably cooperate (solely in its proprietary capacity as owner of the property) as to all requests for approvals and development of the Premises by Tenant, including, but not limited to required Permits, applications, approvals, grants and licenses, whether under local, State or Federal jurisdiction, provided any such cooperation requires no expenditure of County funds and is otherwise in accordance with the terms and conditions of this Agreement.

3.4 **Assignability of Contract Documents**. All of the Tenant's contracts with architects, engineers, and construction contractors for the Premises shall contain provisions permitting said contracts to be collaterally assigned to the Landlord, upon the Landlord's election to be effectuated in writing, if there is a Tenant Default; it being understood that the Landlord shall have no obligation to accept the assignments. Tenant shall use commercially reasonable efforts to make the County an express third-party beneficiary to all such contracts, and shall in all such contracts with architects, engineers, and construction contractors for the Premises, along with all other contracts pertaining to the Premises, and shall require that the County be named an additional insured and beneficiary to all insurance policies required to be maintained pursuant to this Agreement, and that the County be fully indemnified and held harmless from any and all Claims arising out of such third-party's activities on or relating to the Premises.

3.5 **Ownership of Improvements**. During the Term, legal ownership of and legal title to the Improvements on the Premises shall at all times be vested in the County. Upon Final Completion of the Improvements, the Tenant shall execute any document reasonably requested by the County evidencing the ownership of the Improvements by the County.

SECTION 4 Rent

4.1 **Initial Rent**. As the initial annual base land rental for the use and occupancy of the Premises, the Tenant shall pay the amount of **one thousand dollars and zero cents, plus tax ($1,000.00, plus tax) per month** to the Landlord. The Initial Rent shall increase annually on the anniversary of the Commencement Date by 3% over the immediately prior Lease Year, and shall be paid in currency of the United States of America and without billing and demand, and at the offices of the Landlord as set forth in **Section 4.6** (Address for Payments). The Initial Rent shall be paid monthly, commencing on the Commencement Date, and thereafter on the first (1^{st}) day of each month until Substantial Completion of the Improvements. In no event shall Initial Rent be paid following the Completion Deadline.

4.2 **Guaranteed Annual Rent and Percentage of Annual Gross Revenues**.

4.2.1 Rent Calculation. Following Substantial Completion of the Improvements, the Rent shall be payable and shall be calculated as:

4.2.1.1 Upon the earlier of the occurrence of Substantial Completion of any of the Improvements or the Completion Deadline, and for the remaining Term thereafter or continuing through the termination date of the Agreement, the Tenant shall pay to the Landlord BOTH: (a) the Guaranteed Annual Rent and (b) Percentage of Annual Gross Revenues. The date that the increased Rent commences is known as the Rent Adjustment Date.

4.2.2 Guaranteed Annual Rent: The Guaranteed Annual Rent shall be paid by Tenant monthly in advance without notice or billing, on or before the 5th day of each month, plus tax, in an amount equal to one-twelfth (1/12) of the Guaranteed Annual Rent due for the applicable Rent Adjustment Year. The Guaranteed Annual Rent to be paid by the Tenant to the County for the first Rent Adjustment Year- commencing on the Rent Adjustment Date- is equal to the total amount of two hundred and fifty thousand dollars and zero cents ($250,000.00), plus tax, annually, which represents twenty thousand eight hundred thirty-three dollars and thirty-three cents ($20,833.33) per month, subject to the escalation provisions enumerated in Section 4.2.3 below.

4.2.3 Guaranteed Annual Rent Escalator. Following the Rent Adjustment Date, the Guaranteed Annual Rent shall be increased on the anniversary of the Rent Adjustment Date every year thereafter by three percent (3%) over the amount paid or payable for the immediately preceding Rent Adjustment Year. (i.e. On the first anniversary of the Rent Adjustment Date, the annual rent then due and payable for the second Rent Adjustment Year shall be $257,500, plus tax.) On or before the date that is the Completion Deadline or upon Substantial Completion of the Improvements, whichever occurs first, Tenant shall be paying Guaranteed Annual Rent to the Landlord. Acceptance by the Landlord of Guaranteed Annual Rent shall not serve to excuse Tenant from its development and construction obligations, including the Completion Deadline and the deadline for Final Completion and the Landlord does not waive any of its rights with respect therefore.

4.2.4 Annual Report of Gross Revenues. On or before the Gross Revenues Reporting Date of every calendar year following the Rent Adjustment Date, Tenant shall determine the Gross Revenues for the Rent Adjustment Year immediately prior to the anniversary of the Rent Adjustment Date and furnish to the Landlord a statement of the Gross Revenues for the preceding Rent Adjustment Year, along with a detailed breakdown for each month by category of revenues received and amounts associated therewith and by category of exclusions of revenues and amounts associated therewith, and any supporting documentation reasonably requested by the Landlord. The Tenant shall execute a statement certifying the accuracy of such Gross Revenues in a form attached hereto as **Exhibit "G"**.

4.2.5 Percentage of Annual Gross Revenues Payment. Following the Rent Adjustment Date, the Tenant shall pay a percentage of its annual Gross Revenues for each Rent Adjustment Year as follows:

(a) Four percent (4%) of Gross Revenues during the preceding month, plus tax; and

(b) Once Annual Gross Revenues for the applicable Rent Adjustment Year reach $5,000,000.00, six percent (6%) percent of Gross Revenues from the preceding month, plus tax.

The Percentage of Annual Gross Revenues shall be due and paid by Tenant monthly in advance without notice or billing, on or before the 5th day of each month in currency of the United States of America and without billing and demand, and at the offices of the Landlord as set forth in **Section 4.6** (Address for Payments).

4.3 **Tenant's Records and Reports**. The Tenant shall keep in Miami-Dade County, during the Term of this Agreement, all books of account, records and reports used in its operations of the Premises, including but not limited to those necessary to report Gross Revenues payable hereunder and as may, from time to time, be required by the Landlord to document its activities pursuant to this Agreement. All Gross Revenues hereunder shall be accounted for in accordance with GAAP. Landlord shall be permitted, at Landlord's cost, during normal working hours of the Tenant, to audit and examine and make copies of all books of account, records and reports relating to the operations of the Tenant hereunder, including, but not limited to, balance sheets, profit and loss statements, deposit receipts, and such other documents as may be reasonably determined by the Landlord to be necessary and appropriate; provided, however, that (a) the Tenant shall not be required to retain such records in Miami-Dade County, Florida, for more than five (5) years following each Lease Year and (b) Landlord shall keep confidential any documents that are designated, in writing, as trade secrets by Tenant as trade secrets are defined by and in accordance with Applicable Law. Any such inspections shall not unreasonably interfere with ongoing business operations.

4.4 **Security Deposit**. Within ten (10) days of the Commencement Date, the Tenant shall pay to the Landlord the Security Deposit, which is an amount equal to $25,000.00, plus tax, as security for the Tenant's obligations hereunder. The Security Deposit shall be in addition to any other Rent required hereunder.

4.5 **Holdover Rent**. If after the expiration of the Term, without the consent of the Landlord, Tenant refuses to surrender the Premises and remains in possession of the Premises beyond the Termination Date, Tenant shall be bound by all of the terms and conditions of this Agreement, except that the Tenant shall be liable for rent in the amount of 150% of the then applicable Rent for so long as the Tenant remains in possession beyond the Termination Date, and during any such possession of the Premises the Tenant shall be considered a holdover tenant. Such holdover rent shall be based upon the Rent rates then applicable to the Premises.

4.6 **Address for Payments**. The Tenant shall pay, by electronic wire transfer, all rentals, fees and charges required by this Agreement pursuant to the wire instructions to be provided by Landlord under separate cover.

Payments may also be made by hand-delivery to the accounting division offices of the County during normal working hours or may also be made by wire transfer through wire instructions delivered by Landlord to Tenant upon Tenant's request.

4.7 **Late Payment Charge**. In the event the Tenant fails to make any payments, as required to be paid under the provisions of this Agreement, within fifteen (15) Days after same shall become due, interest at the statutory rates for pre-judgment interest established from time to time by the State of Florida shall accrue against the delinquent payments from the original due date until the Landlord actually receives the payment. The right of the Landlord to require payment of such interest and the obligation of the Tenant to pay same shall be in addition to (and not in lieu of) the rights of the Landlord to enforce other provisions herein, including the termination of this Agreement, and to pursue other remedies provided by law.

4.8 **Dishonored Check or Draft**. In the event that the Tenant delivers a dishonored check or draft to the Landlord in payment of any obligation arising under the terms of this Agreement, the Tenant shall incur and pay a service charge of five percent (5%) of the face value of such dishonored check or draft. Further, in such event, the Landlord, upon three (3) Business Days' prior written notice to the Tenant, may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Landlord.

4.9 **Utilities**. This Agreement is a net lease in all respects and therefore the rentals paid by the Tenant for the lease of the Premises hereunder do not in any manner cover the cost for any electrical, water and sewer, storm drainage, and other utilities consumption. The Tenant shall be solely responsible for the availability and provisions of the necessary utilities for its operations and for payment to the appropriate billing entities, whether it is the Landlord or others, for all utilities usage and shall not permit any liens to be filed against the Premises for failure to pay such utility charges. The Tenant, and/or subtenants, as may be applicable, shall pay for all utilities used. Landlord shall have no obligations to install or maintain any utilities.

4.10 **Capital Maintenance Reserve Fund** The Tenant shall create a capital maintenance reserve fund and include it as a part of its pro-forma to ensure that funding is available and used to maintain the Premises and Improvements in close to as-new condition, meaning at least very good, usable condition.

Upon the date of Substantial Completion, the Tenant shall establish an interest-bearing account with a bank or financial institution that is selected by Tenant and approved by County, such approval not to be unreasonably withheld, to be used to deposit and hold all funds for the capital maintenance reserve fund. All earnings and profits from the monies in the capital maintenance reserve fund shall accrue to such fund and be used for the purposes of the fund as indicated herein; provided, however, if interest is earned thereon and Tenant is taxed on such interest, such taxed interest earned on such capital maintenance reserve fund account shall accrue for the benefit of Tenant.

Upon the date of Substantial Completion and continuing through the termination or expiration date of the Agreement, the Tenant shall pay into the capital maintenance reserve fund a percentage of the Gross Revenues, monthly on or before the 10th day following the end of each month during the Term of this Agreement, in an amount no less than 4% of the Gross Revenues for the prior month. Such amount shall be consistent with and calculated using the statement of Gross Revenue due each month. Notwithstanding the foregoing, the total balance of the capital maintenance reserve fund is not required to exceed $200,000 in any Rent Adjustment Year. Once the amounts in deposit exceed $200,000, the Tenant may suspend payment into the capital maintenance reserve fund until such time as disbursements reduce the balance of the aforementioned fund below $200,000, at which point contributions shall resume.

Disbursements from the Fund shall be solely for the purposes of capital repairs and capital maintenance of the Premises and shall be reported to the County on the first day of the month, every month, succeeding the date of Substantial Completion until the termination of the Agreement.

SECTION 5
Permitted Uses

5.1 **General Privileges, Permitted Uses, Obligations and Rights**. In addition to the right and obligation to construct the Improvements, and manage and operate the Premises as a Marina-Front Restaurant and Public Restrooms, the County hereby grants to the Tenant the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereof and Tenant hereby obligates itself to operate the Premises and Improvements for the Permitted Uses and in accordance with the terms, conditions and covenants hereof:

5.1.1 Permitted Use. The Tenant shall construct, develop, operate and manage the Premises for the Marina-Front Restaurant and Public Restrooms in order to enhance the experience and atmosphere of park patrons to Haulover Park and the marina by providing quality food service and offerings that compliment the natural resources and cultural heritage of the park, where beachgoers, boaters, surfers, fishermen, and other park patrons may enjoy food, restroom amenities and the outdoor recreational opportunities within the park (**"Services"**). The Tenant shall occupy and use the Premises for the design, construction, operation and maintenance of the Improvements and provision of the Services and for no other use **("Permitted Use"**). The Permitted Use shall also specifically include live entertainment and music at the Marina-Front Restaurant provided all outside music must be reduced or eliminated by 11:00 p.m. such that complaints are not received from neighboring residents. Landlord may approve, in its sole and absolute discretion and through an amendment to this Agreement approved by the Board of County Commissioners, additional permitted uses for the Premises that are ancillary and directly related to the development and operation of a Marina-Front Restaurant. The Tenant shall not conduct any business or activity not specifically authorized by the Agreement nor shall Tenant occupy any County property other than the Premises. No other uses of the Premises by Tenant are permitted other than the Permitted Uses. For the avoidance of doubt, this Agreement does not grant Tenant any fee simple property rights in the Premises, does not grant any property rights to any real or personal property outside of the Premises, nor does it grant the ability to transfer, sublease, or assign additional uses.

5.1.2 Prohibited Uses. Tenant shall not use or permit the use of the Premises for (a) any illegal or unauthorized purpose, (b) any purpose that is in violation of Article 7 of the Home Rule Charter, all Applicable Laws and, if applicable, the Land and Water Conservation Fund Act, (c) materially inconsistent with the operation of similar establishments at other County parks, (d) other than for the Permitted Uses, (e) noise levels, lighting, or other exhibitions that materially interfere with the use and/or enjoyment of the park by County staff or visitors and patrons or that disturb neighboring businesses and residents, or (f) operating or hosting of a nightclub. The County shall determine in its sole and absolute discretion if the Premises are being impermissibly used as a nightclub.

5.1.3 Ingress and Egress. County grants to Tenant, subtenants, licensees and concessionaires and any of their employees, guests, invitees, and customers the right of ingress to and egress from the Premises over and across public roadways, rights-of-way, sidewalks, driveways, and parking areas.

5.2 Parking. Tenant shall have the non-exclusive right to use the designated employee parking spaces within the Premises for business related activities and in support of operating the Marina-Front Restaurant. Tenant's guests, invitees, and customers must comply with all applicable parking rules and regulations governing the Haulover Park.

SECTION 6
Operations

6.1 **Operations**.

6.1.1 Exclusivity. Subject to the terms of this Agreement, Tenant shall have the sole and exclusive right with respect to the Premises to manage, and operate the Premises and Improvements for the Permitted Use and the Services at the Premises; provided that the Public Restrooms are managed and operated for the use of the County and general public. The County shall not, and shall not authorize or grant any entity other than the Tenant (or any designee of Tenant) any right to operate, manage, coordinate, control, or use all or any portion of the Premises at any time during the Term except for the Public Restrooms which shall be available for use and access during all Hours of Operations for the County and the general public.

6.1.2 Hours of Operations. Tenant, Tenant's employees, customers and invitees shall have the right to access and use the Premises and the County and the general public shall have the right to access and use the Public Restrooms during the following days and hours:

Monday through Thursday: 11:00 am to 10:00 pm; and

Friday through Sunday and County-recognized holidays: 10:00 am to 11:00 pm.

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.

The Tenant, may request a change in its hours of operation and the County, in its sole discretion, may approve or reject such changes.

6.1.3 Operating Rights and Obligations. Tenant shall have the exclusive right, authority, responsibility and obligation to operate, manage, coordinate, control, use and supervise the conduct and operation of the business and affairs pertaining to or necessary for the proper operation, security, safety, maintenance and management of the Premises, all in accordance with the terms and provisions of this Agreement and PROS' rules and regulations set forth in Chapter 26 of the County Code and Article 7 of the Home Rule Charter, including, without limitation, the following operation rights and obligations:

6.1.3.1 scheduling and contracting for all special events at the Premises and establishing all rules and regulations respecting the Premises; provided, that all special events shall be in accordance with the Permitted Use and Tenant agrees to cooperate with and coordinate special events with PROS's staff and meet no less than quarterly with PROS to advise and coordinate Tenant's special events schedules for the upcoming quarter;

6.1.3.2 employment (as agents, employees or independent contractors), termination, supervision and control of all personnel (whether full-time, part-time or temporary) that the Tenant determines to be necessary for the operation of the Premises, subject to the provisions of Miami-Dade County Ordinance No. 08-07, Chapter 26, "Miami-Dade County Park and Recreation Department Rules and Regulations, Article Ill, The Shannon Melendi Act" and subject to the Landlord's right to require Tenant to remove from the Premises and/or from interaction with the public any employee that, in the reasonable opinion of the Landlord, annoys, disturbs, or is offensive to customers, patrons, or others in the immediate vicinity of Tenant's operations;

6.1.3.3 selling and establishing the prices, rates, fees or other charges for Services available at or with respect to the Premises provided such prices, rates, fees or other charges are generally consistent with the prices, rates, fees or other charges at comparable facilities in other County parks;

6.1.3.4 marketing and promoting the Premises and identifying and contracting with all contractors and vendors in connection therewith, and managing, coordinating and supervising said contractors, vendors, and operations;

6.1.3.5 procuring, negotiating and entering into contracts for the furnishing of all utilities, labor, equipment, Services and supplies necessary for the operation of the Premises subject to the requirements of this Agreement and Applicable Law;

6.1.3.6 commencing, defending and settling such legal actions or proceedings against Tenant concerning the operation of the Premises as are necessary or required in the opinion of the Tenant;

6.1.3.7 advertising, including via social media and the internet, for the products and Services to be provided at the Premises;

6.1.3.8 the use or display of any symbolic representation or other visual depiction of the Premises and all associated Marks so long as same is in accordance with Article 7 of the Home Rule Charter;

6.1.3.9 rights to revenues from the exploitation of all other intellectual property owned by or licensed to the Tenant and associated with the Premises and provided same is included in Gross Revenues; and

6.1.3.10 obligation to: (a) identify the Premises and Improvements as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, to eliminate the perception that the area is private; and (b) comply with all Civil Rights and accessibility legislation (e.g. Title IVof the Civil Rights Act, Section 504 of the Rehabilitation Act, Americans with Disabilities Act) as required, and compliance will be indicated by signs posted in visible public areas, statements, information brochures, etc.

6.2 **Signage and Use of Marks**.

6.2.1 Signage. The County agrees that Tenant shall have the right to have Signage in or on the Premises, provided, that such Signage is in accordance with all Applicable Laws and such Signage is, prior to manufacture or installation, approved by PROS, such approval to be granted, denied or conditioned in the reasonable discretion of PROS. All Signage shall be of a size and nature that is reasonably visible to the public visiting the park and consistent with other signage at the park.

6.3 The Tenant shall provide the County a non-exclusive license to use the Marks for any reason associated with the public business of operating a park, including but not limited to, to promote travel and tourism and to publicize to its respective constituents the successful completion of the construction of the Premises and the Improvements thereon.

6.4 **Use Agreements; Service Agreements**. Subject to **Section 16** (Assignment, Subletting and Subcontracting by Tenant) and other terms and conditions of this Agreement including adherence to the Permitted Use, the Tenant shall have the exclusive right to negotiate, execute and perform: (a) use agreements, licenses and other agreements with other entities who desire to schedule special events at the Premises, or any part thereof, or who desire otherwise to license the use of the Premises on a temporary basis; and (b) service agreements with entities that Tenant requires to service and operate the Premises, including but not limited to all Services inclusive of janitorial services, landscaping services, and repair and maintenance services. Each use agreement and service agreement described under this **Section 6.4** shall be in writing, shall name the County as an additional insured in any insurance policy as required, and shall require the entity to indemnify and hold the County harmless to the same extent as Tenant is required to do so in this Agreement.

6.5 **Taxes**. Tenant shall be responsible for and shall pay all Taxes and other costs assessed against the operations of the Tenant, the personal property of the Tenant, and the Tenant's leasehold interest, including but not limited to, the real estate and ad valorem taxes, and shall make payment of same directly to the appropriate taxing authority. The Tenant shall have the right, from time to time, to contest, appeal or otherwise obtain a reduction in any Taxes, and during the period of such contest, shall not be required to pay the assessed amount (except as required by Applicable Law) until a final determination has been made as to the amount of the Tenant's liability for such Taxes.

6.6 **Tenant Obligations Upon Substantial Completion of the Improvements**. Tenant shall within [45] days following the date of Substantial Completion of the Improvements furnish copies of the following to Landlord:

6.6.1 A commissioning or other similar report or test showing that all applicable operational systems, including, but without limitation, all electrical systems, security systems, irrigation systems and fire systems as set forth in the applicable Plans and Specifications have been tested and approved;

6.6.2 A commissioning or other similar report or test showing that all applicable plumbing, heating, ventilation, and air conditioning systems are substantially completed, tested and approved; and

6.6.3 The punch list for the Improvements show minor defects, deficiencies and items of outstanding work that would not materially impair the activities intended within Improvements and could be rectified with minimal interference to the occupancy, use and lawful operation of the Improvements and that all punch list items can be completed with 90 days of Substantial Completion.

6.7 **Tenant Operating Obligations Following Substantial Completion of the Improvements**. Tenant shall:

6.7.1 Furnish their Services in a good, prompt and efficient manner and on fair, equal and not unjustly discriminatory terms to the users thereof, and in accordance with the standards of this Agreement and in compliance with Applicable Laws;

6.7.2 Conduct its operations in a professional manner, comparable or superior to similar establishments and operations, and in an orderly manner so as not to unreasonably annoy, disturb or be offensive to customers, patrons, or others and acting reasonably in the immediate vicinity of such operations;

6.7.3 Reasonably control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives and customers and patrons, and upon reasonable objection of the Landlord concerning the conduct, demeanor or appearance of any such person, the Tenant shall promptly take all reasonable steps to correct the cause of such objection;

6.7.4 Furnish prompt and efficient service that shall be customer-oriented, with resolutions for complaints within twenty-four hours, and meets the Park patrons' needs and all other reasonable demands and will log all customer complaints yearly for review by the County;

6.7.5 Request identification from customers prior to provision of alcoholic beverages and ask customers if they have any allergies prior to providing food items;

6.7.6 Cause its employees in contact with the public to perform their duties in an efficient and courteous manner and to be distinctively uniformed or appropriately attired so as to be distinguishable as the Tenant's employees;

6.7.7 Operate in such a manner so as to not unreasonably interfere in any manner with the use and operations of the park, of the County or the public of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at the park; Clean and prepare the Premises for the next day's business at the close of every business day which shall, at minimum, include cleaning of kitchen and food service preparation areas of the Marina-Front Restaurant, including wiping down of all surfaces, hood and grease trap cleaning, remove all organic and inorganic trash/debris from the exterior of the Marina-Front Restaurant and Public Restrooms, emptying and securing all trash receptacles, cleaning the Public Restrooms and ensuring they are fully stocked with sanitary products;

6.7.8 Prepare plan(s) for emergencies, including fire, acts of nature, and pandemic(s), and implement the approved plan(s) if necessary and adhere to the County's established emergency evacuation and hurricane plan;

6.7.9 Maintain all food service areas and equipment in a safe manner;

6.7.10 Utilize a cash register/point-of-sale system for food and beverage sales transactions at the Marina-Front Restaurant which shall produce daily sales totals for reporting Gross Revenues and be able to provide a monthly reconciliation of daily sales in a format approved by the County;

6.7.11 Provide multiple payment options to customers, including cash, credit card and debit card payment, and remain in compliance with the Payment Card Industry (PCI) Security Standards published by the PCI Security Standards Council in effect and at all times;

6.7.12 Perform or cause to be performed, at its sole cost and expense, all maintenance and repairs of the Premises and the Improvements so as to keep it in a state of good repair, functioning properly and with a visually pleasing appearance, including but not limited to all ordinary or extraordinary repairs and improvements to the interior or exterior of the Improvements, structural or otherwise, in and about the Premises and repair all damages to the Improvements or Premises caused by the Tenant, its employees, agents, invitees, permittees or contractors;

6.7.13 Not use and shall prohibit the use of polystyrene (also known as Styrofoam) on the Premises, in accordance with Miami-Dade County Ordinance No. 16-58; and

6.7.14 Operate the Premises in compliance with Applicable Laws.

6.7.15 Obtain and maintain, at its sole cost and expense, all licenses, permits, and certifications required for the lawful operation of a restaurant in the State of Florida, including, without limitation, a food service license issued by the Florida Department of Business and Professional Regulation, any applicable liquor or alcoholic beverage licenses, health departments approvals, and any other governmental regulatory authorization.

6.8 **Facility Manager.** The Tenant shall hire and assign a full-time person who is a qualified, experienced facility manager(s) to oversee the operations and management of Premises and who will be physically available during reasonable operating hours. The qualifications of said facility manager(s) shall be submitted to the Landlord upon request. During the hours when the facility manager(s) (or representative(s)) is not on duty or available, there shall be a designated assistant manager or designated representative of Tenant. The Landlord shall be advised in writing of the names and phone numbers of the Facility Manager(s) and assistant manager.

6.9 **Security and Protection.** The Tenant acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property, and money used in connection with therewith twenty-four (24) per day, seven (7) days per week, three hundred sixty-five (365) days per year. The County makes no warranties as to any obligation to provide security for the Premises. The County will not accept any responsibility for the Tenant's FF&E, supplies, personal property, money, etc. and Tenant will be solely responsible for all risk of loss or damage to its equipment, personal property and money. Further, Tenant shall undertake to install and implement reasonable security measures and protection for the safety and security of its invitees, patrons and the public using the Premises and the County shall have no liability for any loss or damage therefore or thereto.

The Tenant shall, during all times when the Park is not open, provide security services at Tenant's sole cost and expense for the Premises and shall be responsible for appropriate lighting, safety, and security measures as approved in advance by the Landlord.

SECTION 7
Inspections; Due Diligence Period; Conditions Precedent

7.1 **Inspection Period**.

7.1.1 Inspections. The County and the Tenant hereby acknowledge that as of the Commencement Date, Tenant has not yet fully reviewed and evaluated all aspects of the Premises. Tenant shall have until the expiration of the Due Diligence Period to perform all inspections and investigations of the Premises. Tenant shall, no more than two (2) Business Days after the expiration of the Due Diligence Period, deliver written notice to the Landlord as to whether Tenant intends to proceed with the Agreement or terminate the Agreement. In the event that Tenant fails to deliver such written notice within the foregoing time period, then the Tenant shall be deemed to have waived any right to terminate as a result of the inspections and Tenant shall perform in accordance with the terms and conditions of this Agreement. In addition, Tenant may elect to terminate this Agreement at any time before the expiration of the Due Diligence Period by providing a written notice stating same to the County in accordance with the notice provisions of this Agreement. The County acknowledges and agrees that Tenant's inspections and investigations of the Premises are for Tenant's benefit.

7.1.2 Access. Tenant, its agents, contractors, employees and representatives shall have access to the Premises at all times subsequent to the Commencement Date, subject to any termination of this Agreement, with full right to: (a) inspect the Premises; and (b) conduct reasonable tests thereon including, but not limited to, soil borings and hazardous waste studies, and to make such other examinations with respect thereto as Tenant, its counsel, licensed engineers, surveyors or other representative may deem reasonably necessary. Any inspections or investigations of the Premises by Tenant and all costs and expenses in connection with same shall be at the sole cost of Tenant. Tenant shall not permit any liens or encumbrances to be placed on the Premises and shall immediately remove or bond within thirty (30) days of receipt of notice any lien of any type which attaches to the Premises by virtue of any of Tenant's inspections or investigations. Upon completion of any such inspections and investigations, Tenant shall restore any damage to the Premises caused by Tenant's inspections and investigations unless Tenant is otherwise prohibited from such restoration pursuant to Applicable Laws. Prior to undertaking any such inspections or investigations, Tenant shall provide the County with the insurance certificates and coverage required by this Agreement.

7.1.3 Acknowledgments. Tenant acknowledges that the County has no obligation to perform or cause the performance of any inspections, maintenance, repairs, site work, environmental remediation or any other tasks in order to enable the Tenant to obtain any Permits, authorizations, or licenses to make use of the Premises, including, but not limited to the issuance of TCOs or COs, which tasks shall remain the Tenant's exclusive obligation to perform in order to obtain such Permits.

7.2 **Due Diligence Period**.

7.2.1 Financing Commitment. During the Due Diligence Period, the County agrees to cooperate, at no cost to the County, with the Tenant in connection with obtaining Tenant's Financing, including, executing instruments and consents reasonably requested by the Lender and providing information reasonably requested by the Lender; provided, however, that Tenant shall not close on any Financing until the expiration of the Due Diligence Period.

7.2.2 Title Policy. Tenant shall have the right to obtain an ALTA leasehold owner's title insurance policy in form and substance acceptable to Tenant to be issued by the Tenant's title company, with all standard exceptions deleted, all Schedule B-1 requirements satisfied and the "gap" insured.

7.2.3 Survey. During the Due Diligence Period and prior to its expiration, Tenant shall order, pay for, and obtain a Survey of the Premises, which Survey must be acceptable to Tenant and Landlord in each Party's reasonable discretion and which must provide the sketch and legal description of the land shown in Exhibit “A” that is to be leased to Tenant as the Premises.

SECTION 8
Tenant's Development Obligations

8.1 **Commencement of Construction**. The Tenant shall ensure that the Commencement of Construction shall occur on or before the date that is 34 months after the Commencement Date.

8.2 **Completion Deadline Schedule**. The development of the Premises shall be in accordance with the applicable time periods for completion set forth herein, subject to any adjustments as may be permitted herein. Specifically, the Tenant must achieve the Completion Deadline which shall be on or before the date that is 54 months from the Commencement Date and in line with the phases and timeframes listed in Figure 8.2a below.

Figure 8.2a

Project Phase Deadline Schedule	Maximum Time Allowance from Beginning of Project Phase to Completion
Due Diligence Period	3 Months
Program Phase Development	2 Months
Review & Approval - Program Phase	2 Months
Schematic Phase Development	3 Months
Review & Approval - Schematic Phase	2 Months
Develop 50% Design/Construction Documents	1 Month
Review & Approval - 50% Design Phase	1 Month
Develop 100% Design/Construction Documents	9 Months
Review & Approval - 100% Design/Construction	2 Months
Permitting Phase	9 Months
Construction Phase	20 Months

8.3 **Concurrency, Zoning and Other County Requirements**. The Tenant shall be required to comply with all concurrency, zoning, building permit, moratorium and other County requirements as established from time to time, which are applicable to the Premises and the Improvements and shall have the sole responsibility and obligation to apply for and obtain all land use, environmental, zoning and permitting approvals necessary for development and operation of the Premises in accordance with the provisions of this Agreement. The Tenant shall have sole responsibility and obligation for securing, undertaking and obtaining all utility infrastructure and connections, sewer allocation permits and water and sewer connections and installations, and all applicable Permits associated with same or with any other Work on the Premises or undertaken by Tenant. Tenant shall cooperate with Landlord to minimize any interference with the park's operations during Tenant's construction of the Improvements.

8.4 **Improvements to Premises**. The Tenant shall perform, and shall require that all of its contractors and subcontractors perform all Work related to the Improvements and the Premises in a good and workmanlike manner and in conformity with all Applicable Laws. The Work shall be consistent with the final approved Plans and Specifications. Work performed on the Premises shall (a) be structurally sound, safe, nonhazardous and proper for the use and occupancy for which it is designed; (b) be designed for uses or for purposes as authorized under this Agreement; and (c) not be in violation or contravention of any other provisions of this Agreement.

8.5 **Project Investment and Construction Audit**. The total cost of the project has been estimated to be $7,764,750.00, in no event shall Tenant spend less than 90% of the estimated project cost for the design and construction of the Improvements. The Tenant shall submit a certified design, development and construction audit of the monies actually expended in the design, development and construction of the Improvements including, without limitation, reasonable costs of design, development and construction within one hundred twenty (120) days after receipt of the CO. All reasonable costs and expenses of the auditor relating to the preparation of such construction audit shall be paid by the Tenant.

SECTION 9
Design and Construction of the Improvements

9.1 **Design Responsibility and Design Professionals**. The Tenant shall bear and be solely responsible for the cost of the design and construction of the Improvements, including, as may be applicable, but not limited to, the costs of required Financing, construction bonding and insurance, building permits, cost of contractor(s) and all materials, supplies and equipment needed to undertake the Work, impact and concurrency fees, costs of any consultant(s), CO, as-built plans, if applicable, accountant fees, financing charges, legal fees and costs, furnishings, equipment and other personal property of the Tenant, at its sole cost and expense, or any other indirect costs associated with the design, construction, and financing of the Improvements. The Tenant shall retain one or more professional architect(s), engineer(s) and/or surveyor(s) ("**Design Professional**") to provide design, architectural, engineering, and/or surveying Services ("**Professional Services**") for the development of the Premises. The Improvements shall be designed in a manner to enhance and benefit the outdoor recreation of the entire park, compatible with and supportive of the outdoor recreation resources and opportunities of the park. The Tenant shall enter into written agreements with the Design Professionals providing Services for the design of the Improvements, which agreements shall incorporate, and be consistent with, all of the terms and conditions of this Agreement and be subject to the review by the Landlord prior to their execution. All design and construction are subject to the restrictions and guidelines as outlined in the Design Criteria Package attached as Exhibit B. All fees, costs, reimbursements and/or other monies paid to Design Professionals shall be paid solely by the Tenant from its own Financing and funds. In no event shall the Landlord be obligated to pay for, or reimburse the Tenant and/or any Design Professional for any Professional Services rendered.

9.2 **Capital Project Management Fee**

A Capital Project Manager (CPM) shall be assigned by the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS) to represent Miami-Dade County during the design and construction phase. The CPM shall monitor compliance with the terms and conditions of the Agreement; coordinate reviews; provide comments and approvals; attend design phase and construction meetings; perform periodic site visits/reviews to monitor compliance with the Scope of Services and schedule during the design and construction of the Project. The Tenant shall remit to the County a fee for CPM to expedite its design, permitting, and construction. The Capital Project Manager shall be paid one and one-half percent (1.5%) of the total proposed design and construction cost of the Improvements not to exceed $600,000 within ninety (90) days from award to be known as the Project Management Fee (PMF) which shall be paid according to the following schedule: (1) 25% upon zoning approval; (2) 25% upon receipt of a building permit; (3) 25% upon TCO; and (4) 25% upon restaurant operations commencing on the Premises. The PMF is instituted on all PROS projects only during planning, project approvals, design, construction, permitting, and any additional Site improvement phases to ensure compliance with County asset management and to reduce difficulties associated with capital improvement projects. The PMF shall be subject to an adjustment at the end of the design and construction or upon termination of the Agreement, whichever occurs first, when the actual total design and construction cost is confirmed, and based on an audit conducted at the expense of the Tenant.

The total development cost shall include the cost of the Work including all fees and costs for registered and licensed Design Professionals, geotechnical testing, asbestos testing, asbestos abatement, surveyors, contractors, Subcontractors, materialmen, testing and material, archeological testing, design, construction and archeologist(s) to monitor and produce reports as required.

9.2.1 **Documents for the Plans and Specifications**

9.2.1.1 As soon as reasonably practicable following the Commencement Date but in no event later than five (5) Business Days following the expiration of the Due Diligence Period, Tenant shall cooperate with the County to schedule and attend, at a minimum, one or more pre-design meeting(s) coordinated through the County's facilities project manager with participation from all Parties to this Agreement. Meetings shall be held thereafter no less than on a monthly basis and Tenant shall show the County and its representatives all design drawings and progress drawings at each such meeting. Prior to or during the first meeting, the Tenant may request any changes to the Conceptual Site Plan and the County will act reasonably in reviewing, commenting on and granting or denying its approval for any changes.

9.2.2 Submission and Review of Plans and Specifications. The Tenant shall submit the 50% completed Plans and Specifications for the Improvements to the Landlord as soon as reasonably possible following expiration of the Due Diligence Period Specifications for the Improvements to the Landlord for its review and approval. The 50% completed Plans and Specifications shall be provided as five (5) paper sets and as a CADD file and shall:

9.2.2.1 Be consistent with the Conceptual Site Plan, as may be amended as set forth above;

9.2.2.2 Show transitions between the proposed finished surfaces of the Improvements and the existing surfaces surrounding the Premises are functional, and have a grading and use materials that create a cohesive and seamless transition between the Premises and the areas outside of the Premises; and

9.2.2.3 Include sufficient detail to show that connections to the County-owned water and sewer, any new installed water and sewer or other utility connections, chilled water (HVAC facilitating) and/or the fuel system meet the County's standards and do not unbalance or affect the function of the original service to the adjacent areas and the park.

Upon submission of the Plans and Specifications to the Landlord for its design review, the Landlord shall review same and shall provide Tenant with comments in writing on any applicable Plans and Specifications within twenty (20) Business Days of such submission. All comments by the Landlord shall be incorporated into the 100% complete Plans and Specifications unless the Tenant requests reconsideration, if any, of the Landlord's comments. Such request shall include documentation supporting the Tenant's position. The Landlord shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration. If the Landlord rejects the Tenant's revised 50% Plans and Specifications or comments to the 50% Plans and Specifications, the Landlord shall (a) state the reasons for the rejection in writing, and (b) the Parties shall cooperate and use good faith efforts to resolve the dispute; provided, however, that County Mayor or Mayor's designee shall have the right to issue the final direction and decision for the Plans and Specifications.

9.2.3 . The Landlord shall review the request for reconsideration and shall either approve or If the Landlord rejects the Tenant's revised 50% Plans or comments to the 50% Plans, (a) the Landlord shall state the reasons for the rejection in writing, and (b) the County Representative shall, following the Parties' cooperation and good faith efforts to resolve the dispute, provide a final and binding decision on a resolution of any dispute. At least sixty (60) days prior to the Tenant's planned date of submission of its final 100% complete Plans and Specifications with all construction plans and drawings for the Improvements to the applicable Governmental Authority for the issuance of any building permits, the Tenant shall provide the County with a copy of the final 100% complete Plans and Specifications in the form of five (5) printed set and a computer-aided design and drafting file (CADD) file in compliance with the Landlord's CADD Standards in listed in Section 22.35 of this Agreement for its review and approval. The final 100% complete Plans and Specifications shall conform to Landlord-approved 50% completed Plans and Specifications, and shall show, without limitations, any and all work to be performed on the Premises including site plans, architectural, structural, mechanical, electrical, landscape and plumbing plans, 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 Premises, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and completed technical specifications; all sufficient to enable the Department to make an informed judgment about the schedule, estimate, design and quality of construction of the Improvements and what effect, if any, same shall have on the park. The Landlord shall review same and confirm that the final set of 100% complete Plans and Specifications are consistent with the Landlord-approved 50% complete Plans and Specifications and this Agreement, and shall provide Tenant with comments in writing on the 100% complete Plans and Specifications within twenty (20) Business Days of such submission. All comments by the Landlord shall be incorporated into the applicable final set of Plans and Specifications and shall be the final set of Plans and Specifications to be submitted to the Governmental Authority for permitting, unless the Tenant requests reconsideration, if any, of the Landlord's comments. Such request shall include documentation supporting the Tenant's position. The Landlord shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments in light of the reconsideration. If the Landlord rejects the Tenant's revised 100% completed Plans and Specifications or comments thereto, (a) the Landlord shall state the reasons for the rejection in writing, and (b) the County Representative shall, following the Parties' cooperation and good faith efforts to resolve the dispute, provide a final and binding decision on a resolution of any dispute.

9.2.4 Additions, Changes and Revisions of Landlord-approved Plans and Specifications. In the event that there are any proposed additions or revisions to the Landlord-approved final Plans and Specifications, such changes and plans shall be processed through the approval process set forth in **Section 9.2.2** and **Section 9.2.3**.

9.2.4.1 At least fourteen (14) days before the Commencement of Construction, the Tenant shall provide the Landlord with a copy of the building permits, applicable insurance certificates and the final set of approved and permitted Plans and Specifications. Within thirty (30) days of final completion of the Improvements, the Tenant shall provide the County with "as built" drawings.

9.2.4.2 Review by the Landlord of the "as built" drawings and Plans and Specifications shall not constitute certification or warranty by the Landlord: (a) as to the quality of the "as built" drawings prepared by the Tenant's architect and/or engineer(s), (b) that the "as built" drawings or Plans & Specifications are free of design errors or omissions, or (c) that they are in compliance with all Applicable Laws.

9.3 **Construction Contractor.** The Tenant shall competitively select one or more construction contractors to undertake construction of the Improvements at the Premises in accordance with section 255.20, Florida Statutes and in accordance with the terms and conditions set forth below in Section 9.8. The Tenant shall enter into written agreements with the construction contractor(s) providing Services for the construction of the Improvements, which agreement(s) shall incorporate, and be consistent with, all of the terms and conditions of this Agreement and be subject to the review by the Landlord prior to their execution. All fees, costs, reimbursements and/or other monies paid for the construction of the Improvements shall be paid solely by the

Tenant from its own Financing and funds. In no event shall the Landlord be obligated to pay for, or reimburse the Tenant for any construction work undertaken at the Premises. Tenant shall use best effort to include a provision in each Leasehold Mortgage which will vest the County with all rights, title and interest in the construction plans and specifications financed thereby, should an Event of Default occur, and the affected Leasehold Mortgagee does not elect to complete and/or construct the Work.

9.4 **<u>Conditions Related to the Notice to Proceed and Commencement of Construction</u>**.

9.4.1 Before County, issues notice to proceed to Tenant, and before the Commencement of Construction of any portion of the Work, Tenant hereby agrees that it shall satisfy all of the following conditions precedent and, upon the satisfaction of all such conditions precedent, the County shall issue the notice to proceed to Tenant to Commence Construction:

9.4.1.1 Tenant shall have submitted to the Landlord the final set of approved and permitted construction plans with respect to the Improvements to be constructed on the Premises, and shall have received approval from the Landlord to proceed with same.

9.4.1.2 All Required Governmental Authorities shall have given their development approvals necessary for commencement of construction of the Improvements, and shall have issued all required permits for the construction of same. Tenant shall remit to the Landlord, in electronic format and as a hard copy, copies of such granted approvals.

9.4.1.3 Tenant shall have provided to the County Representative and the County's Parks, Recreation and Open Spaces Department, evidence acceptable to the Landlord that Tenant has the financial ability (including financing resources) to complete the development of the Improvements.

<u>Section 255.05 Bonds</u>. At least ten (10) days before Tenant commences any construction work on the Premises, or any materials are purchased from a supplier, Tenant shall execute, deliver to the Landlord and record in the public records of the County, a payment and performance bond equal to the total cost of construction of the Improvements. Each payment and performance bond shall comply with all applicable laws including the terms of Section 255.05, Florida Statutes, and in compliance with the requirements of Sections 255.05(1)(a) and (c), Section 255.05(3), and Section 255.05(6), and shall name the County and the Tenant beneficiaries thereof, as joint obligees.

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 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

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.

For contracts in excess of 500,000 the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.

Surety Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

The attorney-in-fact or other officer who signs a bond for a surety company must file with such bond a certified copy of the power of attorney authorizing the officer to do so. The bond must be countersigned by the surety's resident Florida Agent. The Tenant may in lieu of a surety bond, submit a cash bond, conditioned upon the faithful performance of the Work in strict accordance with this 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; the said 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.

9.4.2 Alternative Security. Alternatively to the Section 255.05 payment and performance bonds provided for above:

(1) Tenant and its contractors and material suppliers may individually or collectively: Provide the County with an alternate form of security in the form of a certified check in the amount covering total cost of construction of the Improvements which the County may deposit in a County-controlled bank account or an irrevocable letter of credit in a form and for an equivalent amount that is acceptable to the County with respect to timing, amount and beneficiary thereof ("**Alternative Security**"), to remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate

all contractors performing work in connection with the Improvements on the Premises have been paid and Final Construction has been obtained for same, and such Alternative Security shall meet the specifications set forth below; and

(2) Each prime contractor hired by Tenant to perform work and/or make improvements on the Premises shall provide a Performance Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to insure that his/her construction work shall be completed by the contractor or, on its default, his/her surety and shall name the County as an additional obligee and shall meet the specifications set forth below; and

(3) Each prime contractor hired by Tenant to perform work and/or make improvements on the Premises shall provide a Payment Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to secure the completion of the Work and Improvements free from all liens and claims of sub-contractors, mechanics, laborers and materialmen and shall name the County as an additional obligee and payee; and

(4) The Alternative Security and the Bond(s) shall comply with the requirements of Section 255.05, Florida Statutes.

(i) If Tenant provides the Alternative Security, Tenant shall also comply with the following obligations: (a) Tenant shall obtain, subject to Tenant's rights to contest in good faith amounts owing to a prime contractor pursuant to clause (ii) below, a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made; and (b) Tenant shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after final payment is made, subject to Tenant's rights to contest in good faith amounts owing to a prime contractor.

(ii) In the event Tenant’s contractor(s) claim non-payment(s), and/or, fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, Tenant reserves the right but not the obligation to: (a) reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or (b) appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s). Tenant shall have the right to demonstrate good cause for not making any required payment by furnishing written notification of any such good cause to Landlord and the affected contractor(s).

(iii) In either case, Tenant shall, within ten (10) business days of the County's notification, deposit an amount equal to the reduced/disbursed amount in the County's escrow account or increase the irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security posted to cover the prime contractors.

9.5 Tenant shall not allow any Encumbrances including mechanics liens, materialman's liens, or liens, judgments or encumbrances of any kind to be placed on, or to cloud title of, Landlord's fee simple interest in the Premises and shall indemnify Landlord for any costs, expenses, or damages Landlord incurs by reason thereof in the event that any such Encumbrance is not removed or bonded over as a lien on the Landlord's fee simple interest within ninety (90) days after Tenant receives written notice from Landlord demanding removal of such Encumbrance, and in which case, thereafter, the failure to remove or bond over such Encumbrance shall be deemed a Tenant Default unless Tenant is contesting such Encumbrances in due course. Tenant shall promptly take all steps required to promptly remove or otherwise resolve all such Encumbrances of which Tenant has been given actual notice.

9.6 **Permits and Licenses**.

9.6.1 Permitting. The Tenant at its sole cost and expense, shall be liable and responsible for (a) obtaining, paying for, maintaining on a current basis, and fully complying with, any and all Permits, however designated and as may be required, throughout the entire Term of this Agreement, (b) obtaining, paying for and fully complying with, any and all Permits required by Applicable Law for all construction activities of the Tenant conducts on the Premises, and (c) obtaining, paying for, maintaining on a current basis, and fully complying with, any and all Permits, however designated and as may be required, for any and all operations conducted by the Tenant, including compliance or enforcing compliance with all applicable legal requirements and acquisitions of applicable Permits necessary for or resulting, directly or indirectly, from the Tenant's operations and activities on the Premises.

9.6.2 Applications. Tenant may apply to appropriate Governmental Authorities in the name of County, Tenant or both for variances, special use permits, site plan approvals, plats or any other Permits, provided that the construction of Tenant's Work and the occupancy of the Premises will conform to all Applicable Laws and the terms of this Agreement. If a variance, special use permit, site plan approval or plat for which Tenant is entitled to apply is not issued within a reasonable time, Tenant may dispute the failure to issue same, bring legal proceedings to require that the variance, special use permit, site plan approval or plat be issued, appeal any adverse decisions, and defend any appeals of favorable decisions. If a variance, special use permit, site plan approval or plat for which Tenant is entitled to apply pursuant to this Agreement is issued and any Person commences legal proceedings to contest the issuance, Tenant may dispute the proceedings, appeal any adverse decisions and defend any appeals of favorable decisions.

9.7 **Construction and Improvements to Premises and Construction of Improvements**. The Tenant shall, under one (1) or more contracts and in one (1) or more phases of construction, design, permit, construct, and pay for the Improvements and perform all required Work, as shall be necessary to make the Improvements suitable for use, operation or occupancy for the purposes of this Agreement.

9.8 **Small Business Enterprise and Workforce Initiatives**. Tenant shall comply, and shall cause its contractors, architects/design professionals, and all subcontractors, sub-consultants, subtenants and licensees to comply, with the County's Small Business Enterprise ("**SBE**") Program, such as Such as SBE-Construction, SBE-Architectural and Engineering, SBE-Goods, SBE-Services and as set forth in County Ordinance 97-52 as amended and codified in Sections 10-33.02, 2-10.4.01 of the Code of Miami-Dade County, (known as the Community Business Enterprise or CBE Program) and 2-8.1.1.1.1 of the Code, and the County's Responsible Wages and Benefits Program, Residents First Training and Employment, and First Source Hiring programs , as set forth in Sections 2-11.16, 2-11.17 of the Code, and the County's Community Workforce Program in accordance with Section 2-1701 of the Code, Administrative Order 3-22, as amended, Administrative Order No. 3-63, County Resolution No. R-138-10 and County Resolution No. R-1386-09 for the design, construction and operations of the Premises and of the Improvements. Whenever "Tenant" is used in this Section, it shall be deemed to include Tenant's assignees, contractors, and sub-tenants. Prior to advertisement and entering into any design or construction contract for any of the Improvements, and in the case of a design or construction management contract, prior to the authorization of any design or construction package, the Tenant shall deliver the proposed contract and design and construction package to the Small Business Development Office of the County ("**SBD**") for a determination and recommendation (in consultation with Tenant) to the County Mayor of the SBE measures applicable to such design and construction. The County Mayor shall establish the applicable goals upon receipt of the recommendation of SBD (the "**Applicable Measures**"). Tenant shall include the Applicable Measures in design and construction documents and the Responsible Wages (as such program is set forth in Section 2-11.16 of the Code) requirements, and shall adhere to those Applicable Measures in all design and construction activities. Tenant shall incorporate in all design and development contracts the prompt payment provisions contained in the Code with respect to SBE entities. Tenant agrees to include in construction contracts a prohibition against imposing any requirements against SBE entities that are not customary, not otherwise required by law, or which impose a financial burden that intentionally impact SBE entities. Tenant shall require that its contractor(s) shall, at a minimum, use SBD's hiring clearinghouse, Employ Miami-Dade Register, and Employ Miami-Dade Project – all available through CareerSource to recruit workers to fill needed positions for skilled laborers on the Premises. Tenant shall comply with the SBE requirements during all phases of construction of the Premises, and the Improvements in accordance with the SBE requirements package. Tenant shall require it contractor(s) to include applicable Responsible Wage and Workforce Programs requirements in all subcontractor agreements. Should the Tenant fail to comply with any of the applicable SBE requirements, Tenant shall be obligated to make up such deficit in future Improvements and development of the

Premises, and/or pay the applicable monetary penalty pursuant to the Code. Should the Tenant fail to comply with any of the provisions set forth in Section 2-11.16 of the Code, Tenant shall be obligated to, and hereby agrees, to have the County impose the compliance, enforcement, and sanctions provisions set forth therein. Tenant agrees to pay SBD its reasonable costs of monitoring Tenant's compliance with the County's Small Business Programs.

9.9 **Information Technology Infrastructure**. Tenant shall install and maintain an Information Technology (IT) infrastructure to provide free Wireless Fidelity "Wi-Fi" to park patrons only throughout the Premises under the Tenant's purview. The Tenat's IT Infrastructure shall allow for any future technology upgrades, enhancements, and integration with County IT infrastructure and services, as needed. The Tenant's IT infrastructure must be designed to cohesively blend with the Parks topography and not obstruct or impair the public's access to and view of the water. Miami-Dade County will provide the naming conventions that guests or patrons will see when connecting to the free Wi-Fi.

9.9.1 Wi-Fi service must include a cost-effective and practical method, such as a web content filter, that creates a safe browsing environment for the patrons, which prevents the exposure of obscene and potentially harmful website content to minors and protects users from the risk of web-borne threats. While utilizing such a solution, the Lessee can restrict access to high bandwidth or video streaming services that will degrade the Wi-Fi service. In addition to creating a more family-friendly atmosphere, locations that implement an internet content filter for public hotspots are able to prevent illegal activity from occurring over their network and have greater control over their bandwidth and resources.

9.10 **Art in Public Places**. The Improvements to the Premises are subject to the Art in Public Places ("**APP**") provisions in Section 2.11.15 of the Miami-Dade County Code and Administrative Order 3-11, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Tenant shall transmit 1.5% of the costs for all design and construction, Refer to Exhibit L Design and Construction Budget Worksheet, (as outlined in the Procedures Manual) of the Improvements to the Department of Cultural Affairs for the implementation of the APP program. The Tenant is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP program pursuant to the requirements of said program. The referenced documents can be accessed at:

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances
http://www.miamidade.gov/ao/home.asp?Process=alphalist

SECTION 10
Financing

10.1 **Construction and/or Permanent Financing**. The Tenant shall have the right, from time to time, in its sole discretion, to obtain financing, including, without limitation, any construction or permanent financing, and to encumber, in whole or in part, the Tenant's leasehold estate in the Premises and all or any portion of the personal property of Tenant (the "**Leasehold**

Estate"), and to assign all of Tenant's rights and privileges under this Agreement, including without limitation any expansion, extension, or renewal option rights contained herein, and all or any portion of the Improvements, subject to the terms and conditions of this Agreement. Such encumbrance may be by a leasehold mortgage, collateral assignment, security instrument or other lien granted by the Tenant and encumbering all or a portion of the Leasehold Estate (as amended from time to time, the "**Leasehold Mortgage**"). The holder of such Leasehold Mortgage is hereinafter referred to as "**Tenant's Lender**". Notwithstanding and prevailing over any term or condition in this Agreement to the contrary, Tenant understands and agrees that the proceeds of any financing obtained by Tenant that is secured by its Leasehold Estate shall be solely used for construction of the Improvements and shall be in such amounts reasonably necessary for the design and/or construction of the Improvements and shall be on market terms. In no event shall any Leasehold Mortgage or Financing encumber the Landlord's fee simple interest in the Premises or the Improvements. Additionally, Tenant shall have the right from time to time, to refinance or obtain new financing of the then current debt encumbering the Leasehold Estate, and all proceeds from any such refinancing shall be used to satisfy or defease any existing debt and/or to undertaking additional improvements and construction to the Premises, with the Landlord's prior written consent. The term "**Financing**" shall mean the initial financing or any refinancing or new financing as described above in this **Section 10.1**.

10.2 **No Encumbrance of Landlord's Fee Interest**. Notwithstanding anything stated herein to the contrary, the Tenant has no right whatsoever to, and shall not, in any way or under any circumstances, encumber the Landlord's fee simple interest in the Premises and no Leasehold Mortgage shall encumber the Landlord's fee simple interest in the Premises Tenant may not encumber its interest in this Agreement with a Leasehold Mortgage of a duration greater than the remaining Term of the Agreement.

10.3 **Landlord's Obligations to Tenant's Lenders**. In the event Tenant or the Tenant's Lender notifies the Landlord in writing of the name and place for service of notice upon such Tenant's Lender, then for the benefit of such Tenant's Lender from time to time, the following shall apply:

10.3.1 Notice to Tenant's Lender. Landlord shall give to any such Tenant's Lender simultaneously with service on the Tenant, a duplicate of any and all notices of breach, Tenant Default or demands given by the Landlord to the Tenant from time to time. No such notice shall be deemed to have been given to Tenant unless and until a duplicate of any such notice given by the Landlord to the Tenant has been delivered to the Tenant's Lender.

10.3.2 Cure of Tenant Default.

10.3.2.1 Notice to Tenant; Monetary Default. If any monetary Tenant Default occurs by the Tenant under this Agreement and Tenant fails to cure such monetary Tenant Default within the grace and cure periods provided herein for Tenant, the Landlord shall give the Tenant's Lender written notice of Tenant's failure and Tenant's Lender shall have the right, but not the obligation, to cure such monetary Tenant Default within an additional thirty (30) calendar days from Tenant's required cure date, before the Landlord exercises its remedies under this Agreement.

10.3.2.2 Notice to Tenant; Non-Monetary Default. If any non-monetary Tenant Default by the Tenant occurs under this Agreement, and Tenant fails to cure such non-monetary Tenant Default within the grace and cure periods provided herein for Tenant, the Landlord shall give the Tenant's Lender written notice of Tenant's failure and, Tenant's Lender shall have the right, but not the obligation, to cure such non-monetary Tenant Default:

within an additional thirty (30) calendar days from Tenant's required cure date before the Landlord exercises its remedies under this Agreement. If the non-monetary Tenant Default cannot be cured with diligence within such thirty (30) day time period, then the Tenant's Lender shall have a reasonable time thereafter to effect such cure not to exceed ninety (90) additional days, provided that the Tenant's Lender has promptly commenced to cure the same and thereafter is pursuing the curing of the Tenant Default with diligence.

10.3.2.3 No Obligation to Cure. Tenant's Lender shall have the right, but not the obligation, to cure Tenant Defaults as set forth herein. Tenant's Lender will have no personal liability with respect to the performance of the Tenant's obligations under the Agreement except if Tenant's Lender becomes a vested successor tenant to Tenant, evidenced by delivery of a written notice to the Landlord expressly acknowledging Tenant's Lender is taking possession of Tenant's interest in this Agreement and the use of words or terms that clearly evidence an intent to become vested in the Tenant's Leasehold Estate. If the Tenant's Lender becomes a successor tenant to Tenant via vesting, then the Tenant's Lender will be directly liable to the Landlord with respect to the performance of the Tenant's obligations under this Agreement which arise or accrue following such vesting, but only for so long as the period of time that any Tenant's Lender is vested (other than as security for a debt) with title to the Leasehold Estate created pursuant to this Agreement or a new or modified lease entered into with the Landlord, in Landlord's reasonable discretion. The Tenant's Lender may, at any time, notify the Landlord in writing that Tenant's Lender relinquishes all rights in the Premises, or any Area thereof, and shall thereafter have no future liability except such liabilities which arose or accrued during such vesting period (other than as security for a debt) with title to the Leasehold Estate created pursuant to this Agreement or any new or modified lease. If no vesting has occurred, Landlord shall be entitled to continue to look to the Tenant for compliance with the terms of this Agreement, and shall be entitled to all remedies available to the Landlord against Tenant for a Tenant Default.

10.3.3 <u>No Termination; No Surrender</u>. Notwithstanding any other provision of this Agreement, the Landlord (a) shall not have the right to terminate this Agreement due to a Tenant Default unless (i) the Landlord shall have first given the required notices to the Tenant's Lender as required under this Agreement; and (ii) allowed the Tenant's Lender the applicable cure periods described herein and (b) will not accept a voluntary surrender of this Agreement by Tenant or modify or amend the Agreement without first obtaining the consent of the Tenant's Lender.

10.4 <u>Consents</u>. The Landlord consents to, and agrees that the Leasehold Mortgage, or related documents thereto (the "**Loan Documents**") of Tenant may contain, inter alia, provisions for any or all of the following:

10.4.1 an assignment of Tenant's share of the net proceeds from available insurance coverage or from any award or other compensation resulting from any Condemnation; provided, however, said insurance shall be used in the first instance to repair and restore damages to the Premises and the Improvements;

10.4.2 the entry by Tenant's Lender upon the Premises during business hours, without notice to Landlord or Tenant, to view the state of the Leasehold Estate and the Premises;

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

10.4.4 an assignment of any sublease and the rent, issues, revenues and profits thereof, subject to the provisions of **Section 16.6** (Participation); and

10.4.5 the following rights and remedies (among others) to be available to Tenant's Lender upon the default by Tenant under any Loan Documents:

10.4.5.1 the foreclosure of any Leasehold Mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of the Leasehold to the purchaser at the foreclosure sale and a subsequent sale or sublease of the Leasehold Estate by such purchaser if the purchaser is a Tenant's Lender or its nominee or designee, provided that the County is entitled to reasonable approval rights of any subsequent tenant, as outlined in **Section 16.1** (Consent for Transfers);

10.4.5.2 the appointment of a receiver, irrespective of whether Tenant's Lender accelerates the maturity of all indebtedness secured by any Loan Documents;

10.4.5.3 the right of Tenant's Lender or the appointed receiver to enter and take possession of the Premises subject to any Leasehold Mortgage, to manage and operate the same, to collect the sub-rentals, issues and profits therefrom and any other income generated by such Premises pursuant to this Agreement and to make payment of Rent therefrom and to cure any default under the Loan Documents or any Tenant Default under this Agreement; and/or

10.4.5.4 an assignment of Tenant's right, title and interest under this Agreement in and to any deposit of cash, securities or other property which may be held to secure the performance of the obligations of the financing, including, without limitation, the covenants, conditions and agreements contained in any Leasehold Mortgage, in the premiums for or dividends upon any insurance provided for the benefit of any Tenant's Lender or required by the terms of the Agreement, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Leasehold, whether paid or to be paid.

10.5 **<u>Loan Document Default by Tenant</u>**. A default under the Loan Documents shall not be a Tenant Default under this Agreement provided that there is not otherwise a Tenant Default hereunder pursuant to the terms of this Agreement. The Tenant's Lender may assign all of the

Tenant's, and/or Subtenant's, as may be applicable, right title and interest under this Agreement in and to the portion of the Premises secured by such Loan Documents to any third party who shall assume all of the Tenant's obligations with respect to this Agreement which arise or accrue following its acquisition of such interest, subject to the approval of the assignee by the Landlord, which approval shall not be unreasonably withheld or delayed.

10.6 **Cooperation by the Landlord.** Upon the request of the Tenant or Tenant's Lender, the Landlord shall (a) deliver an estoppel certificate in a commercially reasonable form agreed upon by Tenant, Tenant's Lender and Landlord addressed to Tenant, any Tenant's Lender and/or such other party as directed by any of the foregoing, providing, inter alia, assurances as such party or any applicable title company may reasonably request, (b) provide consents or affidavits reasonably needed for any financing consistent with the terms of this Agreement, (c) provide other reasonable documents and instruments appropriate for financing provided that all such documents and instruments, including consents, do not impose any additional obligation on the Landlord or impair any of the Landlord's rights or remedies under the Agreement, and (d) provide any subordination and non-disturbance agreements, consents, partial assignments, collateral assignments of Tenant's rights hereunder and/or landlord lien waivers in forms reasonably acceptable to Landlord, Tenant and any applicable Tenant's Lender.

SECTION 11
Capital Improvements and Maintenance and Repairs by Tenant

11.1 **General**. The Tenant shall promptly undertake and pay for, or cause to be undertaken and paid for, all maintenance and repairs necessary for the proper functioning and operation of the Premises and Improvements and for the beautification and aesthetics thereof.

11.2 **Landlord Inspections**. The Landlord Inspector shall have the right to inspect the Premises during Tenant's normal business hours and the at all hours, or at such other time agreed in writing by Tenant, however, that (a) the Landlord does not unreasonably interfere with the Tenant and (b) prior to inspecting any of the interiors of the Premises, the Landlord will give the Tenant at least one (1) Business Day notice of such inspection. The Landlord shall deliver a copy of any inspection report to Tenant upon completion thereof. If the Tenant disagrees with said report, the Tenant may obtain its own inspection report undertaken by the Tenant Inspector within sixty (60) days of the date that the Landlord's report is delivered to the Tenant and Landlord may accept same in lieu of its own report. If the Landlord does not agree with the Tenant's report the Landlord shall notify the Tenant of all necessary repairs and maintenance that is required of the Premises and Improvements.

11.3 **Failure to Maintain**. If the Tenant fails to correct the deficiencies within thirty (30) days after the Tenant's receipt of written notice, subject to extension thereof as a result of Force Majeure or if additional time not to exceed ninety (90) days is necessary to undertake the corrections to the deficiencies, the Landlord may enter upon the Premises and Improvements, as applicable, and correct the deficiencies, and the Landlord shall add the cost of such work, plus ten percent (10%) for administrative costs, to the Rent due hereunder on the first (1st) day of the month following the date of such work, and provided, that Landlord provides a copy of all applicable invoices and reasonable back-up thereto, such cost shall be and constitute a part of the Rent. Tenant's obligations to maintain the Premises and Improvements and the time frames to complete same shall be extended for Force Majeure for only such additional time as is necessary to comply with such obligations. In the event of any extensions to any deadlines herein required of Tenant as a result of any such delays or Force Majeure, this shall not be a Tenant Default and Landlord shall have no claim for damages for the Tenant's failure to furnish or to furnish in a timely manner any such maintenance.

SECTION 12
Condemnation

12.1 **Notice**. If either Party becomes aware of any actual, threatened, or contemplated Condemnation, then such Party shall promptly notify the other in writing.

12.2 **Taking of Entire Premises**. If at any time during the Term of this Agreement, there is a Condemnation of the entire Premises, such Condemnation shall be deemed to have caused this Agreement to terminate and expire on the date of such Condemnation, and Tenant shall have the right to the Condemnation Award pursuant to **Section 12.3** (Recovery of Condemnation Award) and **Section 12.4** (Proceeds of Condemnation).

12.3 **Recovery of Condemnation Award**. Tenant’s right to recover a portion of the award for a Condemnation, as hereinafter provided, is limited to the fair market value of the Improvements during the term of the Agreement and the value of Tenant’s interest in the unexpired Term of the leasehold estate created pursuant to this Agreement but in no event shall Tenant be entitled to compensation for any fee interest in the Premises. Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to receive from the condemning authority not less than the appraised value of the highest and best use of the Premises as if vacant and assuming no Improvements existed on the Premises, at the time of Condemnation, plus the reversionary value of the Improvements after the term of this Agreement expires, plus any special damages arising from the termination of such Agreement. All rents and other payments required to be paid by Tenant under this Agreement shall be paid up to the date of such Condemnation, which shall be the date on which actual possession of the Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority pursuant to the Condemnation or the date on which title vests therein, whichever is earlier. Tenant and Landlord shall, in all other respects, keep, observe and perform all the terms of this Agreement up to the date of such Condemnation.

12.4 **Proceeds of Condemnation**. In the event following a Condemnation, this Agreement is terminated, the proceeds of any such Condemnation (whole or partial) shall be distributed as described herein. If the value of the respective interests of Landlord and Tenant shall be determined according to the foregoing provisions in the Condemnation proceedings, the values so determined in such Condemnation proceedings shall be conclusive upon Landlord and Tenant. If such values shall not have been separately determined in such Condemnation proceeding, such values shall be fixed by agreement mutually acceptable to Landlord and Tenant, or if they are unable to agree, by an apportionment hearing within the Condemnation proceeding.

12.5 **End of Term**. If a Condemnation of the entire Premises or a portion thereof or a Condemnation of the temporary right to use or occupy all or part of the Premises occurs, then notwithstanding any provision of this **Section 12** (Condemnation), the Tenant, upon thirty (30) days' written notice to the Landlord after the date of the actual Condemnation date, may terminate this Agreement.

SECTION 13
Regulations and Environmental

13.1 **General**. The Tenant shall comply with all Applicable Laws relating to the Premises and the Improvements. The Tenant shall permit the entry, during Tenant's business hours or such other reasonable times as agreed to by Tenant, of any Governmental Authority having competent jurisdiction to make inspections of the Premises to determine the Tenant's compliance therewith, provided, however, that with respect to the Landlord, Landlord shall to give Tenant at least one (1) Business Day notice of such inspection, except in the case of a life-threatening or property-threatening emergency or environmental emergency, in which case Landlord shall have the right to enter the Premises without such notice, but in any event, will use reasonable efforts to contact the Tenant.

13.2 **Penalties, Assessments and Fines**. The Tenant as may be applicable, shall pay on behalf of the Landlord any penalty, assessment or fine issued against the County, or to defend in the name of the Landlord any Claim which may be presented or initiated by any agency or officer of any Governmental Authority (other than a Claim by the Landlord against Tenant under this Agreement) with competent jurisdiction, based in whole or substantial part upon a claim or allegation that the Tenant, its agents, employees, invitees, or trespassers have violated any Applicable Law, including, any Environmental Law described in this **Section 13** (Regulations and Environmental) or any plan or program developed in compliance therewith.

13.3 **Environmental Protection**.

13.3.1 Introduction of Waste or Hazardous Materials. The Tenant agrees that in its use of the Premises it shall comply with any and all Environmental Laws and shall not cause or allow the placement of any Hazardous Materials on the Premises. Tenant shall not cause or allow on or upon the Premises or the Improvements, or as may affect the Premises or the Improvements, any act which may result in the discharge of any Hazardous Materials in violation of Environmental Laws, or otherwise damage the Premises or the Improvements, or any part thereof, due to the release of any Hazardous Materials on or about the Premises or the Improvements. The Tenant further hereby agrees to immediately notify the Landlord, in writing, should Tenant have actual knowledge of the occurrence of an accident or incident in which any Hazardous Materials are released or otherwise discharged on or about the Premises or the in violation of Environmental Laws, and, to the extent not caused by the Landlord or any of its agents, employees, contractors or representatives, Tenant shall remove and dispose of such Hazardous Materials in accordance with applicable Environmental Laws.

13.3.2 Records. The Tenant shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with applicable Environmental Laws.

13.3.3 Monitoring Equipment. If Tenant causes environmental contamination or violates any Environmental Law, the Tenant shall, in addition to any other action required by applicable Environmental Law, DERM or any other Governmental Authority, (a) at its expense and to the extent required by the applicable Environmental Laws, DERM or any Permits requiring such action, install monitoring equipment in locations and in a number and type sufficient to monitor the Tenant's activities in its use of the Premises and (b) in such applicable circumstances, assign appropriate personnel to monitor such equipment. This obligation shall in no way limit the Landlord's right to find Tenant in breach of this Agreement for Tenant's violation of this **Section 13** (Regulations and Environmental) and seek all remedies and damages available to the County for such breach.

13.4 **Tenant's Failure to Comply with Environmental Laws**. The Tenant's breach of its obligations under this **Section 13** (Regulations and Environmental) shall constitute a material breach of this Agreement, subject to all notice, grace and cure periods as set forth in this Agreement and all such obligations shall survive the expiration or earlier termination of this Agreement. Provided, however, that Tenant shall be relieved of any further obligations under this Section 13 if Tenant performs, at its sole cost and expense, an environmental site assessment and report evidencing compliance with all applicable Environmental Laws and confirming the absence of contamination, which report is reviewed and approved by Landlord, DERM, and any other applicable governmental authority.

13.5 **Pre-Existing Environmental Conditions**.

13.5.1 Pre-Existing Environmental Conditions Prior to Construction. If during the Due Diligence Period, the Tenant determines that there are any Pre-Existing Environmental Conditions, the Tenant shall advise the Landlord of same and shall provide the Landlord with a copy of all environmental reports and assessments, in which case, the Tenant shall have the right to terminate this Agreement in its entirety by giving Landlord written notice of such termination by the deadlines set forth in this Agreement for the Due Diligence period, or may request that any such area of the Premises that contains any Pre-Existing Environmental Conditions be removed from the Premises and the size of the Premises reduced accordingly by giving Landlord written notice of such request for reduction of the Premises. The Landlord may, through its County Representative, agree to reduce the size of the Premises as a result of any Pre-Existing Environmental Conditions, provided, that nothing in the foregoing shall adversely compromise the viability of the Site to maintain operations. If, notwithstanding the discovery of Pre-Existing Environmental Conditions during the Due Diligence Period, the Tenant elects not to exercise its right to terminate this Agreement, then Tenant shall assume responsibility for Pre-Existing Environmental Conditions and the remediation and monitoring of such Environmental Conditions on the Premises during the Term of this Agreement.

13.5.2 Pre-Existing Environmental Conditions During Construction. If during the construction of the Site, the Tenant determines that there are any Pre-Existing Environmental Conditions adversely and materially impacting all or any portion of the Premises, the Tenant shall notify the Landlord of same. If the cost to remediate such Pre-Existing Environmental Conditions is equal to or less than Two Hundred Fifty Thousand Dollars and zero cents ($250,000.00) as determined by a licensed environmental engineer, consultant and/or auditor selected by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld, Tenant shall not have a right to terminate this Agreement as a result of such Pre-Existing Environmental Conditions, and Tenant shall be required to remediate such Pre-Existing Environmental Conditions. However, if the cost of such Pre-Existing Environmental Conditions is in excess of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) as determined by a licensed environmental engineer, consultant and/or auditor selected by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld, then: (a) Tenant shall have the right to terminate this Agreement in its entirety, in which case the Parties shall have no further obligations to one another except for those obligations that expressly survive the termination, and (b) Tenant shall have the right to request that any such area of the Premises that contains any such Pre-Existing Environmental Conditions be removed from the Premises and the size of the Premises reduced accordingly, in which case the Landlord may, through the Board of County Commissioners, agree to reduce the size of the Premises; provided, that nothing in the foregoing shall adversely compromise the viability of the Premises, in which case the Tenant may, at Tenant's option decide to (i) proceed with construction of the Premises or (ii) terminate this Agreement pursuant to the foregoing clause (a), or (d) Tenant shall have the right to waive its right to terminate the Agreement pursuant to this **Section 13.5.2** and proceed with the construction of the Improvements.

13.5.3 In accordance with sections 9-71 through 9-75 of the Code of Miami-Dade County, Florida and Implementing Order 8-8 which set forth the County's Sustainable Buildings Program, Tenant shall be required to comply with all provisions of the Sustainable Buildings Program and shall incorporate sustainable development building measures into the design, construction, renovation, operations, and maintenance of the Improvements. Features of the latest version of the Leadership in Energy and Environmental Design (LEED) for New Construction, minimum LEED Silver (LEED-NC), shall be the minimum acceptable certification for Improvements. Tenant shall seek and obtain a minimum of LEED Silver certification on built Improvements and provide all backup documentation to confirm compliance with this requirement. The Tenant is responsible for ensuring compliance with the Sustainable Buildings Program. In addition, Tenant shall incorporate compliance with the following ordinances and resolutions into Improvements, as applicable:

- Electric Vehicle Charging Stations – Ordinance 19-17 and Resolution No. R-1101-15
- Cool Roofs – Resolution R-11031-10 and R-54-18
- Low Emissions or Net-Zero Emissions
- Sea Level Rise – Resolution R-451-14
- Benchmarking Energy and Water Use and use of Energy Star Certified products when available – Resolution R-228-09, R918-12, R795-12

- Water Submeter Required for New Multifamily Residential Developments – Ordinance 08-14 and Section 8A-381(c) of the Miami-Dade County Code
- Solar Hot Water and Solar Photovoltaic Feasibility Evaluation – Resolution R-303-17
- Purchase of Polystyrene Products – Resolution R-500-16 (See Section 5.0(j) of the Solicitation)
- Cool Pavements (https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/land-use.pdf)
- Tree Canopy Enhancement – Comprehensive Development Master Plan (CDMP Goal of reaching a 30% Tree Canopy)
- Energy Efficiency – Achieve a maximum Energy Use Intensity (EUI) of 25 in all new structures (https://www.miamidade.gov/planning/library/reports/planning-documents/cdmp/land-use.pdf)

13.6 **Survival Clause**. Except as otherwise set forth in this Agreement, the Parties' responsibilities, obligations and liabilities pursuant to this **Section 13** (Regulations and Environmental) shall survive the Termination Date or assignment (except to the extent such assignment is to the Lender) of this Agreement.

13.7 **No Waiver by Landlord**. Nothing in this Agreement or otherwise shall be deemed to be a waiver of the Landlord's right to take action against responsible parties other than the Tenant (except as specifically provided herein) for remediation of or payment for any Pre-Existing Environmental Condition or other environmental deficiencies on the Premises, nor be deemed to be an assumption by the Landlord of the responsibility for such remediation or payment, except as may be imposed on the Landlord as a matter of law.

13.8 **No Waiver by Tenant**. Nothing in this Agreement or otherwise shall be deemed to be a waiver of the Tenant's right to take action against responsible parties other than the Landlord (except as specifically provided for herein) for remediation of or payment for environmental deficiencies on the Premises, nor be deemed to be an assumption by Tenant of the responsibility for such remediation or payment, except as expressly set forth in this Agreement.

SECTION 14
Covenants

14.1 **Landlord's Covenants**. The County covenants that except as expressly permitted under this Agreement or otherwise agreed to by the parties in writing, during the entire Term, the County shall not create any new lien, encumbrance, easement, license, right-of-way, covenant, condition or restriction on the Premises which would encumber the Premises and materially diminish, impair or disturb the rights of the Tenant under this Agreement, it being agreed and understood that the foregoing restriction shall not prevent the County from maintaining, operating, repairing or replacing, as applicable, any existing utility easements and with respect to same, the County agrees not to unreasonably interfere with the operations at the Premises.

14.2 **Mutual Covenants**.

14.2.1 Further Assurances. The Parties, whenever and as often as each shall be reasonably requested to do so by another Party, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement, except to the extent such actions by the County require approval by the Board of County Commissioners, in which case, the County shall cooperate and use reasonable efforts to obtain the approval of the Board of County Commissioners without undue delay or conditions.

14.2.2 Good Faith. In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties shall act in good faith. Each Party further acknowledges that the obligation of any Party to act in good faith, undertake good faith efforts, or to use diligent reasonable efforts or other similar efforts does not constitute a warranty, representation or other guaranty that the result which the Parties are attempting to achieve will be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in accordance with the applicable standard.

14.2.3 Ultra Vires. No Party shall terminate this Agreement on the ground of ultra vires acts or for any illegality or on the basis of any challenge to the enforceability of this Agreement, except as otherwise expressly permitted in this Agreement. Subject to the preceding sentence, no such challenge may be asserted by any Party except by the institution of a declaratory action in which the Parties are parties.

14.2.4 Survival. All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement. No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement.

14.2.5 Compliance with Laws. During the entire Term, the County shall comply with all Applicable Laws relating to its ownership of the Premises and the Tenant shall comply with all Applicable Laws relating to its development, use and occupancy of the Premises.

SECTION 15
Representations and Warranties

The County and Tenant represent, warrant and covenant to each other that:

15.1.1 The County and the Tenant each have full power and authority to enter into this Agreement, and the execution, delivery, and performance of this Agreement by the County have been duly authorized by the Board of County Commissioners and by the Tenant has been duly authorized by the managing members. The County Mayor or his/her designee executing this Agreement is the individual duly authorized to execute and deliver this Agreement on behalf of the County and has so executed and delivered this Agreement. The managing member executing this Agreement is the individual duly authorized to execute and deliver this Agreement on behalf of the Tenant and has so executed and delivered this Agreement. This Agreement is a valid and binding obligation of the County and the Tenant, enforceable against the County and against the Tenant in accordance with its terms. The County Representative has been duly authorized to act on behalf of the County as provided in this Agreement and the managing member has been duly authorized to act on behalf of the Tenant as provided in this Agreement.

SECTION 16
Assignment, Subletting and Subcontracting by Tenant

16.1 **Consent for Transfers**. Tenant shall not make a Transfer without the prior consent of the Landlord, such consent to be granted or approved in the sole discretion of the Landlord. In the event of a request for a Transfer, Tenant shall deliver to Landlord written notice of its intent to make a Transfer, and such request shall: (a) be delivered to the Landlord at least thirty (30) days prior to the proposed Transfer, and (b) contain at a minimum: (i) the name of the proposed transferee and disclosure of all persons or business entities owning ten percent (10%) or greater ownership in the proposed transferee along with their/its ownership shares; (ii) a full statement of the proposed transferee's business experience; (iii) a full statement of the proposed transferee's financial strength, including, to the extent reasonably available, financial statements or a balance sheet; and (iv) a statement that such proposed transferee is not banned or prohibited from doing business with the County. The Landlord shall act to approve or disapprove such request within twenty (20) Business Days of receipt thereof. The Landlord may disapprove a transferee pursuant to a request for a Transfer if, among other reasons: (w) the proposed transferee is not a competent, experienced business operator, in the reasonable opinion of the Landlord, (x) the proposed transferee is banned or prohibited from doing business with the County, (y) if the proposed transferee does not meet the Code requirements applicable to all entities doing business with the County; or (z) the proposed Transfer is for an assignment of a portion of the Premises, as applicable, or for a sublease of all of the Premises. The Tenant shall have ninety (90) days from the date on which it receives any disapproval from the Landlord to resolve the reason for the disapproval, but in no event shall Tenant's failure to resolve the reason for the disapproval prevent the Tenant from resubmitting its request for a Transfer or be deemed a Tenant Default hereunder.

16.2 **Transfer Agreements**. All agreements evidencing a Transfer entered into by Tenant relating to the Premises shall:

16.2.1 Be an arm’s length transaction on reasonable and fair market terms.

16.2.2 State that they are subject to this Agreement and that this Agreement shall supersede and control over any contradicting provisions in such Transfer agreement, as applicable;

16.2.3 Specifically provide that "Miami-Dade County, Florida is a third party beneficiary" of such Transfer agreement and related provisions;

16.2.4 Be assigned to the Landlord, at its option, upon an ongoing Tenant Default, after all applicable notice, grace and cure periods;

16.2.5 Name the Landlord as an express beneficiary and additional insured to any insurance policy(ies) required under such Transfer agreement ; and

16.2.6 Require the Landlord to be indemnified and held harmless to the same extent, as the Tenant has agreed to indemnify and hold the Landlord harmless herein.

16.3 **Reservation of Right to Review**. Upon written request from the Landlord, Tenant shall send copies of all Subleases and any Transfer documentation to the Landlord in an electronic or hard copy format.

16.4 **Other Transfers**. Notwithstanding anything herein to the contrary, the consent of the Landlord shall be requested for the following Transfer, with such consent not to be unreasonably withheld, conditioned or delayed: a Transfer of all or any portion of the Agreement or a sublet of all or any portion of the Premises to any of Tenant's Affiliates; provided, that such transferee (i) has sufficient financial capacity to fulfill its applicable obligations pursuant to the Agreement and Transfer agreement, (ii) is not banned or prohibited from doing business with the County, and (iii) satisfies the requirements under the Code for an entity to do business with the County.

16.5 **Effect of Transfer**. Upon completion of a Transfer, the Transfer shall have the following effect:

16.5.1 Succession of Rights. The transferee of the Tenant, and all successors, assignees and transferees, shall succeed to all rights and obligations of the Tenant under this Agreement, but only with respect to the portion of the Premises which was Transferred and Tenant shall be relieved of such rights and obligations, except to the contrary under any Survival Clause(s) under this agreement.

16.5.2 Performance of Required Acts. Any act required to be performed by the Tenant as to the Transferred portion of the Premises pursuant to the terms of this Agreement shall be performed by the transferee and the performance of such act shall be deemed performed by the Tenant and shall be acceptable as the Tenant's act by the Landlord, provided that such act is otherwise performed in accordance with the terms of this Agreement.

16.5.3 One Point of Contact. Notwithstanding any Transfer or subleasing, unless otherwise agreed to by the Landlord and despite any bifurcation of this Agreement, there shall be one Person with whom Landlord shall be required to communicate and receive Rent under this Agreement.

16.5.4 Tenant Remains Liable. Except for an approved assignment of the entire Agreement to a third party and notwithstanding any provision contained in this Agreement to the contrary, Tenant shall at all times remain liable and responsible for all obligations and responsibilities assigned to Tenant under this Agreement.

16.6 **Participation**. Except as set forth in this **Section 16.6** below, in the event that Tenant shall sell or assign: (a) all or a portion of its rights, liabilities or obligations under, or its interests in, this Agreement; or (b) all or a portion of the interests, equity, membership or ownership in the Tenant, whether through a sale of equity or membership shares or interest, a sale of its assets or a merger, consolidation, joint venture or similar transaction, Tenant shall pay or shall cause the seller to pay to Landlord five percent (5%) of the Net Book Profit from such sale or assignment, including, but not limited to, the sale or assignment of that portion of its rights or demised Premises under this Agreement (the "**Participation Fee**"). All stock sale proceeds shall be subject to the Participation Fee, except for those portions of the proceeds returned for investment into and/or development of the Project. For purposes of this **Section 16.6**, a Participation Fee shall not be due for any of the following: (a) any sublease to an operator or manager of the and/or for operation of such Area, as revenues derived therefrom shall be subject to Percentage of Annual Gross Revenues in accordance with **Section 4.2** (Guaranteed Annual Rent and Percentage of Annual Gross Revenues), (b) any use or service agreement otherwise allowed under this Agreement, including any sublease of the Premises or any portion thereof to any vendors, retailers, concessionaires, or operators, as revenues derived therefrom shall be subject to Percentage of Annual Gross Revenues in accordance with **Section 4.2** (Guaranteed Annual Rent and Percentage of Annual Gross Revenues), (c) any Leasehold Mortgage, and (d) any transfer to a Lender or successor of any such Lender. "**Net Book Profit**" shall mean the fair market value of all sums, proceeds and other consideration paid to the Tenant, its members, equity holders of Tenant, or stockholders of Tenant plus any indebtedness assumed by the assignee or buyer in the sale or assignment, less: (A) all transaction-related expenses paid to unaffiliated third parties solely as a result of such sale or assignment, such as brokerage fees and commissions, legal, accounting and financial; (B) the principal amount and interest due and payable up until the date of such sale or assignment of any outstanding debt of the Tenant retained by the Tenant; (C) adjustments for taxes, operating expenses, tenant improvement allowances and other prorations and credits as set forth in the assignment or acquisition agreement; and (D) any capital contribution made to Tenant by any of the Tenant's owners or shareholders (net of any distributions, equity payments, guaranteed payments, dividends or other payments to Tenant's owners or shareholders relating to or arising from such capital contributions in excess of 10% of the capital contribution per year from the date of the capital contribution through the date of the Transfer).

SECTION 17
Indemnification and Hold Harmless

17.1 **Indemnification and Hold Harmless by Tenant**. Tenant shall defend, indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities (the "**Landlord Indemnified Parties**") from any and all Claims, which the Landlord Indemnified Parties may incur as a result of any Claims arising out of, relating to or resulting from the performance or non-performance of this Agreement by the Tenant, or any Affiliates and/or their employees, agents, servants, partners, principals or subcontractors thereto, other than for liability, loss or damage caused solely by the gross negligence or intentional misconduct of any Landlord Indemnified Parties. Tenant shall pay all Claims in connection therewith and shall investigate and defend all Claims in the name of the Landlord Indemnified Parties, where applicable, including any and all appellate proceedings, and shall pay all costs, judgments, and attorneys' fees that may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Tenant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord Indemnified Parties as herein provided. Tenant further understands and agrees that Landlord shall be deemed to have "incurred" attorneys' fees and costs of defense if it uses government lawyers, including but not limited to the County Attorney's Office.

17.2 **Liability for Damage or Injury**. Landlord shall not be liable for any damage or injury which may be sustained by any party, person or any personal property located on the Premises, other than the damage or injury caused solely by the gross negligence or intentional misconduct of the Landlord Indemnified Parties or their officers, employees, agents or subcontractors, and all of which is subject to the conditions and limitations of Florida Statutes, Section 768.28.

17.3 **Indemnification Procedures**.

17.3.1 Notice. If an Indemnified Party shall discover or have actual notice of facts that have given rise, or which may give rise, to a claim for indemnification under this **Section 17** (Indemnification and Hold Harmless), or shall receive notice of any action or proceeding of any matter for which indemnification may be claimed, the Indemnified Party shall, within twenty (20) days following service of process or other written notification of such Claim (or within such shorter time as may be necessary to give the Indemnitor a reasonable opportunity to respond to such service process or notice of a Claim), and within twenty (20) days after any other such notice, notify the Indemnitor in writing thereof together with a statement of such information respecting such matter as the Indemnified Party then has; provided, however, the failure to notify the Indemnitor shall not relieve the Indemnitor from any liability which it may have to the Indemnified Party except and solely to the extent that such failure or delay in notification shall have adversely affected the Indemnitor's ability to defend against, settle or satisfy any such Claim.

17.3.2 Contest. The Indemnitor shall be entitled, at its cost and expense, to contest or defend any such Claim by all appropriate legal proceedings through attorneys of its own choosing, provided the Indemnitor shall have first notified the Indemnified Party of its intention to do so within twenty (20) days after its receipt of such notice from the Indemnified Party. If within twenty (20) days following such notice from the Indemnified Party, the Indemnified Party has not received notice from the Indemnitor that such Claim will be contested or defended by the Indemnitor, the Indemnified Party shall have the right to (a) authorize attorneys satisfactory to it to represent it in connection therewith and/or (b) subject to the approval of the Indemnitor, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise or pay such Claim, in either of which events the Indemnified Party shall be entitled to indemnification thereof as provided in this **Section 17** (Indemnification and Hold Harmless). These provisions in no way prevent the Indemnified Party from taking whatever actions are necessary to defend the Claim during the time before the Indemnified Party learns whether the Indemnitor will contest or defend the Claim. Attorneys' fees, costs and expenses accrued by the Indemnified Party during this time are indemnifiable. If required by the Indemnitor, the Indemnified Party shall cooperate fully with the Indemnitor and its attorneys in contesting or defending any such Claim or, if appropriate, in making any counterclaim or cross complaint against the Person asserting the Claim against the Indemnified Party, but the Indemnitor will reimburse the Indemnified Party for any expenses reasonably incurred by the Indemnified Party in so cooperating.

17.3.3 Payment. The Indemnitor shall pay to the Indemnified Party in cash all amounts to which the Indemnified Party may become entitled by reason of the provisions of this **Section 17** (Indemnification and Hold Harmless), such payment to be made within thirty (30) days after such amounts are finally determined either by mutual agreement or by judgment of a court of competent jurisdiction. Notwithstanding that the Indemnitor is actively conducting a defense or contest of any Claim against an Indemnified Party, such Claim may be settled, compromised or paid by the Indemnified Party without the consent of the Indemnitor; provided however that if such action is taken without the Indemnitor's consent, its indemnification obligations with respect thereto shall be terminated and the Indemnitor shall have no obligation to the Indemnified Party. The Indemnitor shall have the right to settle, compromise or pay any Claim being defended by the Indemnitor without the Indemnified Party's consent so long as such settlement or compromise does not cause the Indemnified Party to incur any present or future material costs, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by the Indemnified Party that would have a material adverse effect on the Indemnified Party.

17.4 **Insurance Recoveries**. Subject to **Section 18.7** (Proceeds of Insurance), the indemnification amounts due to any Indemnified Party under this Agreement shall be reduced by any insurance proceeds received by, or applied on behalf of, such Person from the insurance policies required hereunder for such Claims.

17.5 **Survival**. The indemnities contained in this **Section 17** (Indemnification and Hold Harmless) shall survive the Termination Date, but only insofar as such indemnities relate to any losses that arose prior to the Termination Date of this Agreement.

SECTION 18
Insurance, Bonds and Casualty

18.1 **Insurance Required**. With respect to the Premises and Improvements, Tenant shall maintain or cause to be maintained the insurance set forth below. Tenant shall obtain and provide the Landlord with copies of all required insurance certificates and policies. All certificates of insurance shall be sent to the Internal Services Department, Strategic Procurement Division at **111 NW 1st Street, Suite 1300 to the ATTN of PCO Administering EVN0000753.**

Tenant shall maintain coverage as required in A-C below throughout the term of this agreement and any extensions or renewals thereof:

A. Worker's Compensation Insurance for all employees as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance in an amount not less than $5,000,000 combined single limit per occurrence and in the aggregate for bodily injury and property damage, not to exclude Products **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

**** Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.***

DESIGN PHASE

D. Professional Liability or Errors & Omissions insurance in the name of the licensed design professional(s) providing architectural, engineering, project design, construction supervision, administration and/or any related professional qualifications or functions required by the project for the licensed design professional(s) in an amount not less than $1,000,000 per claim.

If any required insurance has been issued on a 'claims made' basis, the purchaser of such claims made coverage must have an extended reporting or discovery "tail" period of not less than five years after the project completion date and shall have a retroactive date to the date of first design. The limits of liability and the extensions to be included remain the same.

CONSTRUCTION PHASE

Tenant shall ensure that all contractor(s) providing all construction Services in relation to this agreement are to procure and maintain the following insurance coverages throughout the course of the project and shall require all subcontractors providing services in relation to this Agreement to carry any and all insurance coverage that adequately covers each subcontractor's exposure based on the type of services they are providing in connection with the project. Please furnish Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

E. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the completed value of the project. Coverage shall remain in place until final completion of construction has been reached as determined by Miami Dade County. The policy shall be in the name of Miami Dade County and the Contractor.

F. Workers' Compensation Insurance as required by Chapter 440, Florida Statutes for all employees of the contractor and/or sub-contractors and if applicable, should include coverage required under the U.S. Longshoremen and Harbor Workers' Act (USL&H) and/or Jones Act for any activities on or about navigable water.

G. Commercial General Liability Insurance in an amount not less than $1,000,000 per occurrence, $2,000,000 in the aggregate on a per project basis not to exclude Explosion

Collapse and Underground Hazards and Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

H. Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

I. Umbrella Liability or Excess Liability Insurance in an amount not less than $5,000,000 per occurrence and in the aggregate. If Excess Liability insurance is provided, must be follow form to the General Liability and Automobile Liability policies.

J. Pollution Liability insurance in an amount not less than $1,000,000 per claim. **Miami Dade County must be shown as an additional insured with respect to this coverage.**

**** Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.***

OPERATIONAL PHASE

Tenant shall procure and maintain the following insurance coverages throughout the course of the operational phase and shall require all sub-contractors providing services in relation to this Agreement to carry any and all insurance coverage that adequately covers each sub-contractor's exposure based on the type of services they are providing in connection with the operational phase. Please furnish Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Property Insurance on an "All Risk" basis not to exclude Windstorm/Hail, in an amount not less than one hundred percent (100%) of the replacement cost of all real property and shall include Business Interruption coverage in an amount sufficient to continue business operations for a period up to one year.

B. Tenant/Lessee shall also provide property insurance on all personal property and betterments and improvements contained within or on the leased premises. The policy must be written on an "all risks" replacement cost basis, with no more than a ninety (90) percent co-insurance requirement.

C. Flood Insurance for properties in flood zone A or V, in an amount not less than the full replacement value(s) of the completed structure(s). The policy will show Miami-Dade County as Loss Payee A.T.I.M.A. with respect to this coverage.

D. Commercial General Liability Insurance in an amount not less than $5,000,000 per occurrence and in the aggregate not to exclude Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage**

E. Liquor Liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate for any contractor, sub-contractor, vendor, or other party supplying, selling, or serving alcohol.

F. Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

G. Workers' Compensation Insurance as required by Chapter 440, Florida Statutes for all employees of the Tenant and/or sub-contractors.

* ***Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.***

The Risk Management Division of Miami-Dade County Internal Services Department reserves the right, upon reasonable notice, to examine or request the policies of insurance (including but not limited to binders, amendments, exclusions or riders, etc.) Miami-Dade County reserves the right to reasonably amend insurance requirements throughout the duration of this agreement.

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:

The company must be rated no less than "**A-**" as to management, and no less than "**Class VII**" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, 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 Financial Services.

CERTIFICATE HOLDER MUST READ: **MIAMI-DADE COUNTY**
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128

18.2 **Construction Bonds and Insurance Required Contractors**. The Tenant shall obtain from construction contractors and provide certain bonds or letters of credit and evidence of insurance as set forth on **Exhibit H.**

18.3 **<u>Insurance Certificates Required</u>**. Within ten (10) days of the Commencement Date, and annually thereafter, the Tenant shall furnish or cause to be furnished certificates of insurance to the Landlord which certificates shall clearly indicate that the (a) Tenant has obtained insurance in the types, amounts and classifications as required for strict compliance with this **Section 18**, (b) policy cancellation notification provisions specify at least thirty (30) days advance written notice of cancellation to the Landlord, and (c) the Landlord is named as an additional insured with respect to the Tenant's commercial liability policies.

18.4 **<u>Compliance</u>**. Compliance with the requirements of this **Section 18** shall not relieve the Tenant of its liability under any other portion of this Agreement or any other agreement between the Landlord and the Tenant.

18.5 **<u>Right to Examine</u>**. The Landlord reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of insurance coverage. The Tenant shall permit such inspection at the offices of the Tenant upon at least one (1) Business Day's prior notice from the Landlord.

18.6 **<u>Personal Property</u>**. Any personal property of the Tenant or of others placed in the Premises shall be at the sole risk of the Tenant or the owners thereof, and the Landlord shall not be liable for any loss or damage thereto.

18.7 **<u>Proceeds of Insurance</u>**. Without limiting the Tenant's obligations under **Section 11** (Capital Improvements and Maintenance and Repairs by Tenant) with respect to Maintenance and Repairs, any and all Insurance Proceeds paid under the property insurance policy required hereunder that are not proceeds paid pursuant to the property insurance policy and designated for the repair, restoration, replacement or rebuilding of all or any part of the Improvements (e.g., proceeds for business interruption or other business loss) shall be payable to the Tenant.

18.8 **<u>Notice</u>**. If either Party becomes aware of any Casualty, then such Party shall promptly provide written notice to the other.

18.9 **<u>Restoration of Damaged Improvements</u>**.

18.9.1 In the event of a Casualty, Tenant shall determine within thirty (30) days of the date of such Casualty whether Tenant shall either:

18.9.1.1 proceed with the Restoration of the Improvements which Restoration shall take place in a diligent and prompt manner and be completed as expeditiously as possible and in accordance with the deadlines and provisions set forth herein; or

18.9.1.2 Tenant may decide not to proceed with the Restoration of the Improvements that are subject to such Casualty and instead, demolish the Improvements or remaining Improvements and remove all debris from the Premises, within 120 days of the Casualty, without reconstruction, and this Agreement shall terminate. Tenant shall use the

Insurance Proceeds to restore the Premises to substantially the condition that they were in as of the Commencement Date.

18.9.2 In the event of a Casualty where Tenant elects to proceed with the Restoration, Tenant shall use its best efforts to proceed with such Restoration in an expeditious and diligent manner so as to have the Premises and Improvements restored, rebuilt and operable as soon as possible but in no event to exceed three (3) years from the date of such Casualty. If Tenant fails to comply with the provisions of this subsection, including but not limited to Tenant's failure to complete the Restoration by no later than 3 years from the date of Casualty then either party shall have the right to terminate this Agreement upon written notice to the other party. Tenant shall use the Insurance Proceeds to restore the Premises to substantially the condition that they were in as of the Commencement Date.

18.9.2 Effect on Completion Deadlines. In the event that there is a Casualty prior to the Completion Deadline, such that the Tenant cannot reasonably complete all or a portion of the Work by the Completion Deadline, the Parties agree that it shall not be deemed a Tenant Default for Tenant's failure to achieve the Completion Deadline, provided that Tenant meets its obligations for Restoration of the applicable damaged or destroyed Improvements within the deadlines set forth herein.

SECTION 19
Default by Landlord or Tenant

19.1 **Tenant Defaults**. The following shall constitute a "Tenant Default" by Tenant:

19.1.1 A failure by the Tenant to make any payment of Rent required to be paid under this Agreement by the due date for payment of such Rent; and

19.1.2 The Tenant fails to immediately take all appropriate action and corrective measures in an expeditious manner in the event that the Landlord notifies the Tenant that a public health or safety emergency exists or is imminently likely to exist due to the Tenant's failure to comply with this Agreement or Applicable Law; and

19.1.3 A failure by the Tenant to fulfill and a breach of the Tenant of its non-monetary obligations under this Agreement; and

19.1.4 If a Bankruptcy-Related Event arises with respect to the Tenant.

19.2 **Cure Period and Landlord's Remedies for a Tenant Default**.

19.2.1 Landlord Notice. If a Tenant Default occurs under 19.1.1 and 19.1.3 of this Agreement, then, Landlord shall provide written notice of such Tenant Default to Tenant. Tenant shall have:

(a) Five (5) Business Days from the date of the Landlord's default notice to cure any Tenant Default under Section 19.1.1 of this Agreement; and

(b) Thirty (30) Days from the date of the Landlord's default notice to cure any Tenant Default under Section 19.1.3 of this Agreement; provided that if such breach is not capable of being cured within such thirty (30) day period, the Tenant shall have such longer period of time as is reasonably required to cure said breach not to exceed an additional one-hundred fifty (150) days to cure the Tenant Default so long as Tenant has commenced substantial corrective steps within such thirty (30) Day period and diligently pursues same to completion on or before the expiration of the addition one-hundred fifty (150) Day cure period.

19.2.2 Landlord Remedies. If a Tenant Default occurs, then, subject to the rights of the Lender hereunder, Landlord shall, at Landlord's option, have any or all of the following remedies, all cumulative (such that the exercise of one remedy shall not preclude the exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. Landlord's remedies include:

19.2.2.1 For a Tenant Default under Section 19.1.2 or 19.1.4 of this Agreement, Landlord may terminate this Agreement and Tenant's right of possession thereto immediately upon written notice to Tenant.

19.2.2.2 For a Tenant Default under Section 19.1.1 or 19.1.3 which is not cured following notice and the time periods set forth in Section 19.2 above, Landlord may terminate this Agreement and Tenant's right of possession thereto effective thirty (30) days following written notice of termination to Tenant.

19.2.2.3 For a Persistent Tenant Default, Landlord may terminate this Agreement and Tenant's right of possession thereto effective thirty (30) days following written notice of termination to Tenant. A "**Persistent Tenant Default**" shall exist upon the occurrence, within a twenty-four (24)-month period, of five (5) or more: (a) Tenant Defaults under Section 19.1.1; or (b) Tenant Defaults under Section 19.1.3 of a same or similar nature and/or arising from the same or similar Tenant conduct among all five (5) or more Tenant Defaults.

19.2.2.4 Landlord may re-enter and take possession of the Premises, and remove Tenant, with or without having terminated this Agreement, and without thereby being liable for damages or guilty of trespass.

19.2.2.5 Landlord may sue for damages or to recover Rent from time to time at Landlord's election.

19.2.2.6 Landlord may recover from Tenant all actual damages Landlord incurs by reason of a Tenant Default, including reasonable costs of recovering possession and reletting the Premises, and any and all other damages legally recoverable by Landlord in connection therewith, and reimbursement of Landlord's actual out of pocket costs, fees, and expenses and bank fees for dishonored checks; provided, however, this shall not include attorneys' fees.

19.2.2.7 Landlord may obtain a court order enjoining the Tenant from continuing any Tenant Default, without the necessity of posting a bond as a condition thereto. Tenant specifically and expressly acknowledges that damages might not constitute an adequate remedy for any non-monetary Tenant Default.

19.2.3 Receipt of Moneys. No receipt of money by Landlord from Tenant after termination of this Agreement, or after the giving of any notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice theretofore given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Agreement expressly states otherwise, it being agreed that after service of written notice to terminate this Agreement or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such written notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord's election, on account of Tenant's liability.

19.2.4 No Waiver. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy upon a Tenant Default, and no acceptance of full or partial Rent during the continuance of any such Tenant Default, shall waive any such Tenant Default or such covenant, agreement, term, or condition. No waiver of any Tenant Default by Landlord shall modify this Agreement. Each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Tenant Default of such covenant, agreement, term or condition of this Agreement.

19.3 **Landlord Default**. A failure by the Landlord to fulfill and a breach of the Landlord of its obligations under this Agreement to the extent that Landlord fails to cure said breach within thirty (30) calendar days from receipt of written notice from the Tenant shall constitute a Landlord Default; provided, however, that if such breach is not capable of being cured within such thirty (30) day period, the Landlord shall have such longer period of time as is reasonably required to cure said breach not to exceed an additional one-hundred fifty (150) days so long as Landlord has commenced substantial corrective steps within such thirty (30) calendar day period and diligently pursues same to completion or else has taken legal steps that permit the Landlord not to comply until the conclusion of such legal steps.

19.4 **Tenant Remedies in the Event of a Landlord Default**.

19.4.1 Tenant Remedies. In the event of a Landlord Default, then, subject to the rights of the Lender hereunder, Tenant shall, at Tenant's option, have any or all of the following remedies, all cumulative (such that the exercise of one remedy shall not preclude the exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement; provided however, that the Landlord shall never be liable for indirect, consequential, or punitive damages or lost profits. Tenant's remedies include:

19.4.1.1 Tenant may recover from Landlord by judicial process all actual damages Tenant incurs by reason of a Landlord Default, but in no event shall Tenant have the right to offset such amount against any Rent due to Landlord hereunder.

19.4.1.2 Tenant may obtain a court order enjoining the Landlord from continuing any Landlord Default. Landlord specifically and expressly acknowledges that damages might not constitute an adequate remedy for any non-monetary Landlord Default.

19.4.2 No Waiver. No failure by Tenant to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy upon a Landlord Default, and no acceptance of full or partial payment of any amounts due hereunder by Landlord during the continuance of any such Landlord Default, shall waive any such Landlord Default or such covenant, agreement, term, or condition. No waiver of any Landlord Default by Tenant shall modify this Agreement. Each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Landlord Default of such covenant, agreement, term or condition of this Agreement.

SECTION 20
Actions at Termination

20.1 **Actions at Termination**. The Tenant shall vacate, quit, surrender up and deliver the Premises or the applicable Area to the Landlord on or before the Termination Date of this Agreement, whether by lapse of time or otherwise. The Tenant shall surrender the Premises pursuant to this **Section 20** (Actions at Termination). The Tenant shall deliver to the Landlord, if not previously delivered or in the Landlord's possession, a complete set of as-built drawings in a form as is the reasonable and customary standard for submitting such drawings at the time of delivery to the Landlord, and a set of all keys to the Premises, to the extent in Tenant's possession and control, upon surrender. If any agency or department of the federal or state government or any court determines that the use of the Premises and improvements thereon is a conversion of use, if applicable, then the County retains the right to terminate this Agreement.

20.1.1 Personal Property. Tenant shall have the right to remove its personal property for a period of up to sixty (60) calendar days after the Termination of this Agreement or other reasonable time fairly determined in the discretion of the County, but in no event less than sixty (60) calendar days. The reasonableness of such time shall depend on the nature of the removal requirements and the Tenant's payment of any Rents, fees or charges required to be paid herein. Any personal property of the Tenant not removed in accordance with this **Section 20.1** (Actions at Termination) may be removed by the Landlord and stored at the cost of the Tenant. Failure on the part of the Tenant to reclaim its personal property within sixty (60) calendar days or such other reasonable time from the date of termination shall constitute a gratuitous transfer of title thereof to the Landlord.

20.1.2 Termination Audit. Within ninety (90) days prior to the Termination Date (including all extensions), the Tenant shall conduct an environmental audit. If such environmental audit reveals any condition that requires environmental remediation in accordance with the Environmental Laws at the time of such environmental audit, the Tenant shall remediate such environmental conditions. For purposes of clarification, in no event shall Tenant have any obligation to remediate any condition that was caused by the Landlord or any of its agencies, departments, employees, contractors, subcontractors, agents, invitees, tenants (other than Tenant). The environmental audit required under this **Section 20.1.2** shall be conducted at the Tenant's sole cost and expense.

SECTION 21
Special Conditions

21.1 **Inspector General Reviews/Audit & Compliance**.

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

21.1.2 **Supplier Registration/Conflict of Interest**

a) Supplier/Vendor Registration

The Tenant shall be a registered vendor with the County – Strategic Procurement Department, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Tenant'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**
- **Payments to individual/Contractor for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**

- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

The Tenant confirms its commitment to comply with the vendor registration requirements and the associated affidavits available in **INFORMS** at https://supplier.miamidade.gov.

b) Conflict of Interest and Code of Ethics

Sections 2-11.1 (c) and (d) of the Code require that any County official, agency/board member or employee, or any member of his or her immediate family who, through a firm, corporation, partnership or business entity, has a financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first obtain and submit a written conflict of interest opinion from the County's Ethics Commission prior to the official, agency/board member or employee, or his or her immediate family member entering into any contract or transacting any business with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business transaction entered in violation of these subsections, as amended, shall be rendered voidable. All County officials, autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Conflict of Interest and Code of Ethics Ordinance.

21.1.3 **Miami-Dade County Inspector General Review**.

21.1.3.1 According to Section 2-1076 of the Code, as amended by Ordinance No. 99-63, the 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 Agreement 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 shall be assumed by the County, and Tenant shall have no liability therefore.

21.1.3.2 Nothing contained above shall in any way limit the powers of the Miami-Dade County Inspector General to perform audits on all County contracts, provided that neither the Miami-Dade County Inspector General nor IPSIG shall be entitled to receive, review or copy any documents that are privileged, confidential or proprietary to Tenant. 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 Miami-Dade County Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to Tenant. 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 Miami-Dade County Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders, if any, to the Agreement. The Miami-Dade County Inspector General is empowered to retain, at no expense or cost to Tenant, the services of an IPSIG to, subject to all Applicable Laws, audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes, including but not limited to project design, specifications, proposal submittals, activities of Tenant, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Agreement and to detect fraud and corruption.

21.1.3.3 Subject to all Applicable Laws and the terms and conditions herein, upon written notice to Tenant from the Inspector General or IPSIG retained by the Inspector General, Tenant shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to Tenant. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to Tenant, copy all such documents and records in the Tenant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from 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, provided that neither the Inspector General nor IPSIG shall be entitled to receive, review or copy any documents that are privileged, confidential or proprietary to Tenant.

21.1.4 **Availability of Records/Landlord Audit & Review**. Until the expiration of five (5) years after the termination of this Agreement, Tenant shall have the obligation to retain and to make available to Landlord, and its representatives, all books, documents and records of Tenant pertaining to this Agreement and to Tenant's compliance with the terms and conditions of the Agreement and all Applicable Laws, including but not limited to those documents and records contemplated by the Miami-Dade County Inspector General and IPSIG provisions described above. Upon Landlord's (or its representative's) request, Tenant will promptly and make available all such books, documents and records of Tenant.

21.1.5 **Commission Auditor**. The Commission Auditor shall have the right to inspect and audit the books, records, financial statements and operations of Tenant all in accordance with Section 2-481 of the County Code and Tenant agrees to comply with same.

21.2 **Employment Discrimination**. The Tenant shall not discriminate unlawfully against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Lease, the Tenant attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Tenant or any owner, subsidiary or other firm affiliated with or related to the Tenant is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Lease void. This Lease shall be void if the Tenant submits a false affidavit pursuant to this Resolution or the Tenant violates the Act or the Resolution during the term of this Lease, even if the Tenant was not in violation at the time it submitted its affidavit.

21.3 **Nondiscriminatory Access to Premises and Services**. The Tenant, for itself, its personal representatives, successors-in-interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (a) no Person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (b) that in the construction of any Improvements on, over, or under the Premises and the furnishings of services thereon or in the construction of the , no Person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that the Tenant shall use the Premises in compliance with all other applicable requirements with respect to non-discrimination imposed by or pursuant to all Applicable Laws.

21.4 **Drug-Free Workplace Certification**. The Tenant, in its execution of this Agreement, hereby certifies pursuant to County Ordinance No. 92-15, adopted on March 17, 1992, and as such may be amended from time to time, that it will use reasonable efforts to provide a drug-free workplace for all of its employees. In providing such drug-free workplace(s), as a minimum, the Tenant shall do the following:

21.4.1 **Written Statement**. Provide each employee with a written statement notifying the employee that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, as defined in Section 893.02(4), Fla. Stat. (1998, as amended) in the Tenant's workplace(s) is prohibited and specifying the actions the Tenant will take against employees for violation of such prohibition. Each employee shall be requested to sign a copy of the written statement required pursuant to this **Section 21.4.1** to acknowledge the employee's receipt of same and advice as to the specifics of such policy. The Tenant shall maintain copies of the statements signed by its employees. The Tenant shall also post in prominent places at all of its workplaces a written statement of its drug-free workplace policy containing at least all of the elements contained in this **Section 21.4.1**.

21.4.2 **Certification**. Annually, as of the annual anniversary date of the Commencement Date, the Tenant shall provide a certification, in a form to be prescribed by the County, that it will continue to use reasonable efforts to provide for drug-free workplace(s) in the same manner as described herein.

21.5 **County Representative**. The County Representative shall act as liaison and contact person between the Tenant and the County in administering and implementing the terms of this Agreement. Nothing contained in this **Section 21.5** shall preclude the County

Representative from seeking Board of County Commissioners approval for the delegated authority contained in this **Section 21.5**. In addition, and notwithstanding any of the foregoing, the County Representatives shall be required to seek Board of County Commissioners approval, as applicable, for any approvals, consents, actions, events or undertakings by any Party or any other third parties that would violate, alter, or ignore the substantive provisions of this Agreement, or that would create a financial obligation, cost, or expense to the County that is greater than that set forth in this Agreement.

21.6 **Sovereign Rights**. The County retains all of its sovereign prerogatives and rights as a county (the "**Sovereign**") under State and local law with respect to the planning, design, construction, development and operation of the Improvements and the .. It is expressly understood that notwithstanding any provisions of this Agreement and the County's status thereunder:

21.6.1 The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State and local law and shall in no way be estopped from withholding or refusing to issue any approvals or 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 Premises, the Improvements, the or the operation thereof, or be liable for the same.

21.6.2 The County shall not by virtue of this Agreement be obligated to grant the Tenant any approvals of applications for building, zoning, planning, development or otherwise under present or future Applicable Laws of whatever nature applicable to the planning, design, construction, development and/or operation of the Premises, the Improvements and the .

21.6.3 Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Regulatory and Economic Resources Department, DERM, or any other County, city, federal or state department or authority, committee or agency (i.e., any Governmental 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/their police power(s), and the County shall be released and held harmless by Tenant from any liability, responsibility, Claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action.

21.7 **Governing Law; Venue**. This Agreement shall be governed and construed in accordance with the internal laws of the State without regard to its conflicts of law provisions. The venue of any action with respect to this Agreement shall be in Miami-Dade County, Florida, and any action to determine the rights or obligations of the Parties hereto shall be brought in the appropriate Federal or State courts in the State.

21.8 **Interest of Members, Officers or Employees and Former Members, Officers or Employees**. No member, officer, or employee of the County, no member of the governing body of the locality in which the Agreement is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

21.9 **Verification of Employment Eligibility – E-Verify**. By entering into this Agreement, the Tenant becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Tenant effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Agreement, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Tenant may be liable for any additional costs incurred by the Landlord resulting from the termination of the Agreement. If this Agreement is terminated for a violation of the statute by the Tenant, the Tenant may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

21.10 **Federal, State, and Local Compliance Requirements**. As applicable, Tenant shall comply, subject to applicable professional standards, with the provisions of all applicable federal, state and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

a) Miami-Dade County Small Business Enterprises Development Participation Provisions.

b) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.

c) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).

d) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).

e) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".

f) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".

g) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".

h) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

i) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).

j) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".

k) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination".

l) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft".

m) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations".

n) Any other laws prohibiting wage rate discrimination based on sex.

o) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

p) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".

q) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

r) The U.S. Land and Water Conservation Fund Act (36 C.F.R. Part 59).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Tenant is certifying that the Tenant is in compliance with, and will continue to comply with, the provisions of items "e" through "j" above.

The Tenant shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Tenant for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Tenant. The Project Manager shall verify the certification(s), license(s), and permit(s) for the Tenant prior to authorizing Work and as needed.

Notwithstanding any other provision of this Agreement, Tenant shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Tenant, constitute a violation of any law or regulation to which Tenant is subject, including but not limited to laws and regulations requiring that Tenant conduct its operations in a safe and sound manner.

21.11 **<u>Individually Identifiable Health Information and/or Protected Health Information</u>**. Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI)" shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security, and electronic transfer standards, include but are not limited to:

1. Use of information only for performing Services required by the Contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and Subcontractors agree to the same restrictions and conditions that apply to the Tenant and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Tenant must give its customers written notice of its privacy information practices including specifically a description of the types of uses and disclosures that would be made with protected health information.

21.12 **<u>Rights Reserved</u>.** Rights not specifically granted the Tenant by this Agreement are reserved to the County.

21.13 **<u>Beverage Rights</u>.** The County reserves the right, at its sole and absolute discretion, to enter into future agreements with other vendors to provide such vendors the exclusive right to supply the County with Beverages or enter into agreements that provide that certain branded Beverages shall be the only Beverages that will be sold, dispensed or served at County facilities. Such agreements may take the form of Pouring Rights agreements, sponsorship agreements, marketing partnership agreements or other exclusive rights agreements. The Tenant agrees and acknowledges that because of such future agreements the Tenant may be required to supply only Beverages of a certain brand to the County.

21.14 **<u>Other Programs</u>**. Tenant is aware of the policy of Miami-Dade County that in all leases of County-owned land which provide for privately funded construction improvements thereon whose construction costs are greater than or equal to $5 million dollars, any portion of which are financed by any federal, state or local governmental entity or by bonds issued by such entities, including the Industrial Development Authority (IDA), the tenant shall include the requirements of the Responsible Wages Ordinance codified as Section 2-11.16 of the Miami-Dade County Code, as well as Implementing Order #3-24 in all applicable construction contracts. Tenant agrees to comply with all applicable provisions of such ordinance and implementing order.

The ordinance referred to as the "Little Davis-Bacon Ordinance" under Section 2-11.16, Residents First Training and Employment, and First Source Hiring Programs, as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, 2-8.1.1.1.2, 2-11.16, 2-1701 and 2-11.17 of the Code of Miami-Dade County, Florida ("Code"), and the Employ Miami-Dade Program Administrative Order No. 3-63, Section 2-1701 Community Workforce Program, by the Small Business Development division, and any other program of the County made applicable to the Tenant's activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time, Tenant agrees to comply with such applicable provisions as well as any Implementing Orders and other directives issued by the County relating to such Programs.

21.15 **Costs and Attorney's Fees**. Each of the parties hereto shall bear its own costs and attorneys' fees in connection with the execution of this Agreement and, except for indemnification obligations, with any and all other matters arising under this Agreement, including but not limited to defaults or litigation arising hereunder. The terms of this provision shall survive the termination of this Agreement.

21.16 **Quiet Enjoyment**. Subject to the terms of this Agreement, and upon the observance by the Tenant of all the terms, provisions, covenants and conditions imposed upon the Tenant hereunder, the Tenant and its Subtenants shall peaceably and quietly hold and enjoy the Premises for the term of this Agreement; provided, however, that the Landlord shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Tenant's business, for acts or omissions of Subtenants, third parties, or when any department or agency of the County is acting in its governmental capacity or by Force Majeure and provided further that the County and the public shall have use of the Public Restrooms.

21.17 **Notices**. All notices required or permitted to be given under the terms and provisions of this Agreement by either Party to the other shall be in writing and shall be faxed, or hand delivered, or sent by nationally recognized overnight delivery service, to the Parties as follows:

As to the Landlord:

Miami-Dade County Parks, Recreation, and Open Spaces Department
275 NW 2nd Street
Miami, Florida 33128
Attention: Contracts Management
Telephone: (305) 755-7994
Facsimile: (305) 755-7996
Email: PROSCONTRACTS@miamidade.gov

With a copy to:

Miami-Dade County
Strategic Procurement Department
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
Email: cpo@miamidade.gov

As to the Tenant:

Haulover Bay, LLC
Attention: Alex Kalas Kosmas
4770 Biscayne Blvd, Suite 680
Miami, FL 33137
Phone: (305) 576-1616
Email: kkalas@bellsouth.net

or to such other address as may hereafter be provided by the Parties in writing. Notices by nationally recognized overnight delivery service or hand delivery shall be deemed given upon receipt or refusal of delivery. Notice addresses for this Agreement, including but not limited to the provisions of this **Section 21.17**, may be changed by notice given in accordance with this **Section 21.17**.

21.18 **Headings**. Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

21.19 **Time of Essence**. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

21.20 **Relationship of Parties**. No partnership or joint venture is established among the Parties under this Agreement. Except as expressly provided in this Agreement, no Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other Party or to have been authorized to incur any expense on behalf of any other Party or to act for or to bind any other Party. No Party shall be liable for any acts, omissions or negligence on the part of the other Parties or their employees, officials, agents, independent contractors, licensees and invitees.

21.21 **Binding Effect**. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

21.22 **Severability**. If any provision of this Agreement or the application thereof to either Party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

21.23 **No Waiver**. There shall be no waiver of the right of either Party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, Tenant Default, Landlord Default or non-performance hereof by either Party, unless such waiver is explicitly made in writing by the Party so waiving. Any previous waiver or course of dealing shall not affect the right of either Party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, Tenant Default, Landlord Default or non-performance hereof by the other Party.

21.24 **Successors and Assigns**. The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its permitted successors and assigns (including but not limited to Leasehold Mortgagees, as appropriate and applicable), except as may be otherwise provided herein.

21.25 **Gender Neutral/Gender Inclusive Signage**. Tenant hereby agrees that it shall comply with Miami-Dade County's Resolution No. R-1054-16, to identify all single occupancy restrooms located in the Premises, and to replace any gender signage with gender neutral/gender inclusive signage on or near the opening of such single occupancy restrooms, which will be depicted in the Plans and Specifications, as approved by the County.

21.26 **Brokers**. Landlord and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement.

21.27 **Force Majeure**. With the exception of the obligation of the Tenant to pay the amounts required by the terms of this Agreement, all other terms and conditions of this Agreement following the expiration of the Due Diligence Period shall be subject to Force Majeure and neither the Landlord nor the Tenant shall be considered in default in the performance of their respective obligations hereunder if such performance is prevented or delayed because of Force Majeure subject to the limitations set forth herein. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure, then the performance of such obligation shall be extended by the length of such Force Majeure. Any Party claiming Force Majeure, under any provision of this Agreement, shall notify the other Party: (a) within ten (10) days of any such event of Force Majeure of the existence thereof; and (b) within 10 days after such Force Majeure ceases to exist, and failure to do so may affect the entitlement of the Party claiming Force Majeure to claim same. Where this Agreement states that performance of any obligation is subject to Force Majeure or words of similar import, such Force Majeure shall extend the time for such performance only by the number of days by which such Force Majeure actually delayed such performance. In response to and during any delay caused by a Force Majeure, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible and any party seeking an excuse of performance due to such Force Majeure shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure. Notwithstanding and prevailing to anything contained herein to the contrary, no Force Majeure shall serve to extend the time for performance of any of the covenants or provisions of this Agreement by more than six (6) months.

21.28 **Florida Public Records Act.** As it relates to this Agreement, pursuant to Section 119.0701 of the Florida Statutes:

(a) Tenant understands, agrees and acknowledges that this Agreement and Tenant's operations thereunder are subject to the provisions of Chapter 119 of the Florida Statutes commonly referred to as "Florida's Public Records Laws".

(b) For purposes of this section, the term "public records'" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County.

(c) IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE MIAMI-DADE COUNTY PARKS, RECREATION AND OPEN SPACES DEPARTMENT, ATTN: MR. DAVID LIVINGSTONE, (305) 755-7824, dcl@miamidade.gov, 275 NW 2ND STREET, 5TH FLOOR, ROOM 555, MIAMI, FL 33128-1719.

(d) Tenant is required to keep and maintain public records required to perform under this Agreement and, upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by applicable law.

(e) Tenant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Lease term and following completion of the Agreement if the Tenant does not transfer the records to the County

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

(g) If the County does not possess public records responsive to a request to inspect or copy public records relating to this Agreement, the County shall immediately notify the Tenant of the request, and the Tenant must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

(h) If Tenant does not comply with a request for records, it shall be a material breach of this Agreement and the County shall have the right to the remedies set forth in Section 19 of this Agreement. In addition, if Tenants fails to provide the public records within a reasonable time may be subject to penalties under s. 119.10.

Tenant's obligations under this section of the Agreement shall survive the termination of this Agreement.

21.29 **Entirety of Agreement**. This Agreement sets forth the entire 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 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 and approved by the Board of County Commissioners.

21.30 **Radon Disclosure**. In accordance with Section 404.056, Fla. Stat. (1998, as amended) the following disclosure is hereby made:

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

21.31 **Kidnapping, Custody Offenses, Human Trafficking And Related Offenses Affidavit.**

21.31.1 By entering into, amending, or renewing this Contract, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Contract"), as applicable, the Tenant is obligated to comply with the provisions of Section 787.06, Florida Statutes ("F.S."), "Human Trafficking," as amended, which is deemed as being incorporated by reference in this Contract. All definitions and requirements from Section 787.06, F.S., apply to this Contract.

21.31.2 This compliance includes the Tenant providing an affidavit that it does not use coercion for labor or services. This attestation by the Tenant shall be in the form attached to this Contract as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the "Affidavit"), attached to this Contract as Exhibit K, and must be executed by the Tenant and provided to the County when entering, amending, or renewing this Contract.

21.31.3 This Contract shall be void if the Tenant submits a false Affidavit pursuant to Section 787.06, F.S., or the Tenant violates Section 787.06, F.S., during the term of this Contract, even if the Tenant was not in violation at the time it submitted its Affidavit.

21.32 **Contracting with Entities of Foreign Countries of Concern Prohibited.** By entering into this Contract, the Tenant affirms that it is not in violation of Section 287.138, Florida Statutes (F.S.) titled Contracting with Entities of Foreign Countries of Concern Prohibited. Tenant further affirms that it is not giving a government of a foreign country of concern, as listed in Section 287.138, F.S., access to an individual's personal identifying information if: a) the Tenant is owned by a government of a foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the Tenant; or c) the Tenant is organized under the laws of or has its principal place of business in a foreign country of concern as is set forth in Paragraphs 2(a)–(c) of Section 287.138, F.S. The affirmation by the Tenant shall be in the form attached to this Contract as Exhibit J – Contracting with Entities of Foreign Countries of Concern Prohibited Affidavit. This Contract shall not be effective unless and until Tenant executes such Affidavit.

21.33 **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 in this Agreement; (2) the Exhibits to this Agreement; (3) the Miami-Dade County's EVN0000753 and any associated addenda and attachments thereof; and (4) the Tenant's Proposal.

21.34 **Counterparts**. This Agreement may be executed in any number of counterparts with the same effect as if all Parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

21.35 **CAD Requirements**

CAD STANDARDS, SURVEY STANDARDS, PDF, AND CD-DVD REQUIREMENTS
TPROS Department standards listed below are for Computer Aided Design (CAD) drawings, Portable Document Format (PDF) documents, and Compact Disc/Digital Versatile Disc/Universal Serial Bus (CD/DVD/USB) submittals.

CAD Compliance Submittal Review Requirements (format and content):

- All CAD files are to be submitted as an AutoCAD .DWG format (version 2018) and AutoCAD DWF.

- Custom menus or arx applications are not allowed if it creates a requirement for the drawing to be used. No menus, custom user interface (cui) files or arx applications are to be submitted.
- Each CAD drawing should represent a single printed sheet where the file name conspicuously identifies the sheet number using PROS File naming conventions (see PROS CAD Standard Manual)
- No .zip files are allowed.

<u>CAD Standards (For a complete reference, please review PROS CAD Standards Manual – September 2016):</u>

- Title block
- o All sheets are to have a title block.
- o Title block information is to be on the right side of the sheet.
- o Title blocks shall contain the following information, as appropriate:
  - Date
  - Project Number
  - Park Facility Number
  - Project Name
  - Sheet Name
  - Sheet Number
  - A Key Plan
  - List of Revisions
  - Consultant Company Name
  - The A/E's Seal

- Layering Format and **Line weight**
- o Use PROS CAD Standards. Prefer method is assig **Line weight** by layer no by color.

- Scale and Units
- o All objects are to be drawn at full scale for the assigned unit of measure.
- o All drawings are to have a unit of measure assigned and not set to "unitless". External references usage in CAD Documents must reference as relative.

- Area of Work
- o CAD drawings shall include a boundary to define the Area of Work encompassing all areas, and only those areas where work is to be performed.

- Metadata shall be provided for all submitted files in the form of a matrix as a Microsoft excel file as follow:

Metadata			
Project Number:			
Project Name:			
PROS PM Name:			
File name	**Drawing name**	**Description/Sheet Title**	**Data Source (company name)**
Example:			
SDP03001A-XP01.dwg	A-102	Mechanical Piping Drawing	ACME Corporation

Datums and Survey Related Files:
Drawings shall be referenced to the Florida East Zone/ NAD 83-90 HARN Feet State Plane Coordinate System. All elevations will be based on NAVD88. Architectural drawings may use architectural units on a coordinate system convenient for the project, and reference a NAD83 coordinates at each building corner. Drawings shall be in 2D with z = 0 feet. 3D and BIM documents are welcome in addition, but not in lieu of standard submittals. Only data collection devices having alphanumeric capability to record comment, descriptions, and other relevant project information are to be used. Collection of field survey data should be comprehensive. All ground features pertinent to the required end product should be collected as part of the field effort. When submitting plans that include surveyed ground surfaces, a field book files, Survey Land XML files or a ASCII text files containing all elevation points shall be delivered.

PDF Requirements:

- All documents are to be created as PDF files from the original source files, unless approved otherwise in writing by Owner.
- PDF Files shall reside in the same folder as the CAD version of the sheet.
- The CAD printer shall be Autodesk DWG to PDF.pc3 print configuration.
- Layer information shall not be included.
- All documents are to be created with a resolution of not less than 300 dpi.
- All fonts are to be embedded in the PDF.
- When compression is used, the algorithm must be LZW, CITT Group 4, or Pack Bits.
- The PDF document size must be the same as the original document size if the document were printed (e.g., a 24x36 print should have a PDF sheet size of 24x36).
- Each document must be submitted as a single file, as follows:
    - A single document, such as a pre-design report or design calculations is one file.
    - A single drawing is one file.
    - A document larger than 11x17 inches is defined as a single document and is one file.
- No .zip files are allowed.

CD/DVD/USB Requirements:

- All CD/DVD/USB Drive document submittals required by the Agreement will be reviewed and approved by the Owner for CAD compliance and to determine completeness of the documents provided.
- The Tenant may request a CAD drawing compliance review at any time during the Project through the PROS Capital Project Manager.
- All CAD drawings shall be provided electronically to the PROS Capital Project Manager for review.

Contact Information:

Please direct all compliance-related questions to:
CAD & Survey Manager
humberto.cabanas@miamidade.gov
Miami-Dade Parks, Recreation and Open Spaces Department
275 NW 2 ST, Miami, FL, 33128

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date identified on the first page of this Agreement.

Tenant		Miami-Dade County	
By:	(Signature)	By:	(Signature) for
Name:	K. ALEANDER KALAS	Name:	Daniella Levine Cava
Title:	PARTNER	Title:	Mayor
Date:	10-30-2025	Date:	
Attest:	Corporate Officer TOM BILLANTE	Attest:	Juan Fernandez-Barquin Clerk of the Court and Comptroller
		By:	(Deputy Clerk Signature)
		Print Name:	

Approved as to form
and legal sufficiency

Assistant County Attorney

List of Exhibits

Exhibit A – Location Map;

Exhibit B – Design Criteria Package;

Exhibit C – Irrigation South As-Built;

Exhibit D – Pump Station Locations;

Exhibit E – Legal Description;

Exhibit F – Conceptual Site Plan;

Exhibit G – Gross Revenues Certification Form;

Exhibit H – Surety Performance and Payment Bond;

Exhibit I – Haulover Bay, LLC Proposal;

Exhibit J – Contracting with Entities of Foreign Countries of Concerns Prohibited Affidavit;

Exhibit K – Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit;

Exhibit L – Design and Construction Budget Worksheet; and

Exhibit M – Residents First Training and Employment Program Responsible Contractor/Subcontractor Affidavit Form.