

ISSUING DEPARTMENT INPUT DOCUMENT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☒ New ☐ OTR ☐ Sole Source ☐ Bid Waiver ☐ Emergency Previous Contract/Project No. N/A

☐ Contract
☐ Re-Bid ☐ Other – Access of Other Entity Contract LIVING WAGE APPLIES: ☐ YES ☒ NO

Requisition No./Project No.: RFP-02171 TERM OF CONTRACT 30 YEAR(S) WITH 20 YEAR(S) OTR

Requisition /Project Title: Haulover Marina-Front Food Service Operation

Description: Miami-Dade Parks, Recreation and Open Spaces (PROS) Department, is seeking qualified and experienced Proposer(s) to develop, finance, design, construct, operate, maintain, and manage a Marina Front Food Service Operation at Haulover Park.

Issuing Department: ISD, SPD Contact Person: Jason Edelstein Phone: 305-375-4211

Estimate Cost: \$0 GENERAL FEDERAL OTHER
Funding Source: Revenue Gen

ANALYSIS

<u>Commodity Codes:</u>	<u>906-38</u>	<u>906-72</u>	<u>909-22</u>	<u>909-24</u>	<u>909-30</u>
Contract/Project History of previous purchases three (3) years Check here <input checked="" type="checkbox"/> if this is a new contract/purchase with no previous history.					
	<u>EXISTING</u>	<u>2ND YEAR</u>	<u>3RD YEAR</u>		
Contractor:	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>		
Small Business Enterprise:	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>		
Contract Value:	<u>Revenue Generating</u>				
Comments:					

Continued on another page (s): ☐ YES ☒ NO

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE	<u></u>	<u></u>	<u></u>	<u></u>
Basis of Recommendation:				
Signed: <u>Jason Edelstein</u>		Date sent to SBD: <u>01/27/2022</u>		
		Date returned to SPD: <u></u>		

EXHIBIT K – DEVELOPMENT RIDER
Haulover Marina Front Food Service Operation

This Development Rider is attached to and hereby made a part of the Lease Agreement and shall govern the development of the Haulover Marina Front Food Service Operation (the "Project"). Words and phrases used in this Development Rider shall have the same meaning as in the Lease Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Development Rider and the provisions of the terms and conditions of the Lease Agreement during the development phase, the terms and conditions of the Development Rider will prevail.

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

DESIGN CRITERIA PACKAGE

The attached design criteria package specifies the following: Haulover General Plan, Haulover Park Design Guidelines, Haulover Park Sea Level Rise Study, Haulover Park Site Survey (pdf & dwg), Haulover Master Plan Development Cost Estimate, Home Rule Charter - Article 7, Park and Open Spaces System Master Plan (OSMP), and Park Structure and Landscape Pattern Book. The design criteria specifications for this Project is also set forth in the Solicitation documents for this Project. Refer to link below and attached design criteria package.

The Lessee shall provide Turn-Key designs, development, and management for an Marina Front Food Service Operation with Optional Fishing Pier listed below at Haulover Park:

The Food Service Operation built shall be in compliance with all applicable building codes (including Florida Building Code Chapter 11 ADA), this Development Rider, and Lessee shall obtain all necessary permits and approvals. PROS approval of the design and plans must be obtained prior to submission to the applicable building and/or zoning department. **See RFP-02170, Section 2.0 for information pertaining to the Scope of Services.**

CAPITAL PROJECT MANAGEMENT FEE

A Capital Project Manager shall be assigned by the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS) to represent Miami-Dade County during the development phase. The Contract Project Manager shall monitor compliance with the terms and conditions of the Development Rider; 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 Lessee shall remit to the County a fee for Capital Project Management (CPM) to expedite its design, permitting, and construction, as applicable. The Capital Project Manager shall be paid one and one-half percent (1.5%) of the total proposed cost of the Food Service Operation and Optional Fishing Pier, as applicable, not to exceed \$200,000 annually to be known as the Project Management Fee (PMF). The PMF is instituted on all PROS projects only during planning, project approvals, design, permitting, and Site improvement phases to ensure compliance with County asset management and to reduce difficulties associated with capital improvement projects. The PMF shall be paid on a monthly basis, commensurate with the progress of the Work, beginning on the Lease Effective Date to the Date of Beneficial Occupancy.

For purposes of this Development Rider, 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, and archeologist to monitor and produce reports as required.

BONDING REQUIREMENTS

The Lessee shall duly execute and deliver to the County at 111 N.W. 1st Street, Suite 1300, Miami, FL, cc: Jason Edelstein, a Payment and Performance Bond (Bond) in accordance with all of the requirements 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 Lessee as beneficiaries thereof, as joint obligees. The payment and performance bond shall be equal to 100% of any construction Work, and Lessee shall obtain same within 30 Days of receiving a Notice to Proceed issued by the County and no less than 10 days prior to commencing any work, at the Lessee's own expense. The Bond shall be in the form of a Performance and Payment Bond and shall remain in effect until the Lessee receives a Certificate of Occupancy for the Food Service Operation. The Bond may be in the form of a Surety Bond written through a surety bond agency, rated as to Management and Strength as set forth below.

The following specifications shall apply to the bond required above:

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

<u>Bond Amount</u>	<u>Best Rating</u>
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

2. On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

Providing evidence that the surety has twice the minimum surplus and capital required by the following:

- Florida Insurance Code at the time the issued proposal is submitted;
- Certifying that the surety is otherwise in compliance with the Florida Insurance Code; and
- Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

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

3. For contracts in excess of 500,000 the provisions of Section B will be adhered to plus 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.
4. Surety Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
5. In lieu of a Performance Bond, an irrevocable letter of credit or a cash bond in the form of a certified cashier's check made out to the Board of County Commissioners will be acceptable. All interest will accrue to Miami-Dade County during the life of this contract and as long as the funds are being held by Miami-Dade County.
6. 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 Lessee 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.
7. If a Surety Bond was furnished, the Lessee shall deliver to PROS Project Manager the written consent of the Lessee's Surety covering every such partial payment permitting such payment to be made without affecting the validity of the Bond.
8. If a Cash Bond was furnished, PROS Project Manager will examine the conditions relating to the delay, also the amount and nature of the work remaining to be completed and his decision will determine whether partial payments will continue to be made or withheld. The validity of the Bond shall in no way be affected regardless of which course of action is taken.
9. Irrevocable Letter of Credit - The Lessee may substitute the Performance, Warranty, and/or Payment Bond(s) with an Irrevocable Letter of Credit that otherwise satisfies the provisions of this section with respect to timing, amount and the beneficiary thereof. Irrevocable Letter(s) of Credit shall be in the form as approved by Miami-Dade County. Said Irrevocable Letter(s) of Credit shall

be drawn on a financial institution, which is federally insured and authorized to do business in the State of Florida. Provisions of the Irrevocable Letter(s) of Credit shall not limit, in any way, any liability of the Lessee to Miami-Dade County in the performance of the Work.

Lessee shall not allow any mechanics liens or materialman's liens, or liens, judgments or encumbrances of any kind to be placed on, or to cloud title of, the County's fee simple interest in the Project, including land underlying same, and shall promptly take all steps required to promptly remove or otherwise resolve all such encumbrances.

INDEMNIFICATION

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

INSURANCE REQUIREMENTS FOR DESIGN & CONSTRUCTION

Lessee (*and/or any Sub-contractors providing design and construction services in relation to this Lease Agreement*) are to procure and maintain the following insurance coverage's throughout the course of Site preparation and construction and shall require all Subcontractors providing Work in relation to this Lease Agreement to carry any and all insurance coverage that adequately covers each Subcontractor's exposure based on the type of Work they are providing in connection with the Site preparation and facility construction until the Food Service Operation is accepted by the County.

- (A) 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 Lessee.
- (B) Workers' Compensation Insurance for all employees of the Lessee as required by Florida Statute 440.

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.
- (C) Commercial General Liability Insurance in an amount not less than \$5,000,000 per occurrence, \$10,000,000 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.
- (D) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.
- (E) Professional Liability or Errors & Omissions insurance covering architectural and/or engineering project design, construction supervision, administration and any related professional qualifications or functions required by the project for the licensed Design Professional in an amount not less than \$5,000,000 per claim.

If any required insurance purchased by the Lessee, Subcontractor, and/or licensed Design Professional 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 (5) 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.

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

REPORTS

Commented [E](1): Why does this need to be repeated from Agreement.

Lessee shall submit monthly written reports to PROS of the progress with respect to development and construction of the Project until completion.

TIME OF THE ESSENCE

The timely completion of all activities set forth below, and the milestones set forth in the Development Schedule for each phase is of the essence, subject to force majeure.

Development Schedule

The schedule below denotes anticipated timeframes:

Phase	Timeframe
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	2 Months
Review & Approval - 50% Design Phase	1 Month
Develop 100% Design/Construction Documents	4 Months
Review & Approval - 100% Design/Construction	2 Months
Permitting Phase	9 Months
Construction Phase	12 Months

SITE CONDITIONS

The Lessee accepts complete responsibility for all conditions encountered at the Park, including, without limitation unforeseen site conditions, archeological findings, subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the construction plans, unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the Project, and any dewatering activities necessary to construct the Food Service Operation. The Lessee shall be responsible for the removal or relocation of man-made obstructions, abandoned foundations, utilities, and natural obstructions required for the completion of the Food Service Operation. The Lessee shall also be responsible for any and all site conditions, including environmental conditions, caused, disturbed, or exacerbated by the construction, and agrees to be responsible for and pay for all environmental remediation work that is required to be performed resulting from the construction of the Food Service Operation. The Lessee shall be responsible for and pay for any archeological testing, monitoring and reports required, and incur the cost of any delay in construction due to archeological finding. The Lessee further agrees not to initiate any claims or suits against the County relating to any site condition, including environmental conditions, and to indemnify, defend and hold harmless the County from and against any claims arising from an environmental condition caused or exacerbated by the Lessee in the construction of the Project.

Notice of Discharge to County:

In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or clean-up of any hazardous material on or about the Demised Premises in connection with Lessee's operation thereon; or (ii) any written environmental claim affecting Lessee from any person or entity resulting from Lessee's use on or about the Demised Premises, then Lessee shall immediately notify Lessor orally within twenty-four (24) hours and in writing within three (3) days of said notice. If Lessor is reasonably satisfied that Lessee is not promptly commencing the response to either of such events, then County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such hazardous material or environmental claim following receipt of any notice from any person

or any entity having jurisdiction asserting the existence of any hazardous material or an environmental claim pertaining to the Demised Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Lease Agreement and shall be payable by Lessee upon demand.

With regard to any reporting obligation arising out of Lessee's operations or during the Lease Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Regulatory and Economic Resources, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

Within sixty (60) days of execution of this Lease Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of hazardous materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

SITE ACCESS

At the time the Lessee is authorized by the County to take control of the Site and enter for the purpose of commencing construction, the Lessee shall be provided access over only that Site. At the time the Lessee is authorized by the County to commence construction, the Lessee shall be granted access to the Site and shall be required to coordinate with the County as to the schedule for commencement, duration and location of any construction, staging and mobilization areas outside of the Site needed to complete the required Work. All construction areas shall be covered during the development phase by the bonds and insurances required under this Development Rider.

SELECTING A DESIGN PROFESSIONAL

The Lessee desires to, and has agreed, to retain a professional architect, engineer and/or surveyor (Design Professional) to provide design, architectural, engineering, and/or surveying services (Professional Services) for the development of the Site. In selecting and contracting with one or more Design Professionals to provide Professional Services to the Food Service Operation, the Lessee understands it must comply, and agrees to comply, with Section 2-10.4.01 of the Code of Miami-Dade County, Florida (known as the Community Business Enterprise or CBE Program). As such, prior to contracting with any Design Professional for Professional Services, the Lessee agrees to consult with the Review Committee in the County's Internal Services Department's Small Business Development's Division (ISD) in order to determine whether CBE goals and/or measures are appropriate and, if so, what those goals and/or measures will be. The Lessee must comply with the CBE goals and/or measures established by the County's Review Committee. The Lessee shall enter into written agreements with the Design Professionals providing services for the Project, which agreements shall incorporate, and be consistent with, all of the terms and conditions of the Lease Agreement and be subject to review and approval by the County prior to their execution.

All fees, costs, reimbursements and/or other monies paid to Design Professionals for Professional Services shall be paid solely by the Lessee. In no event shall the County be obligated to pay for, or reimburse the Lessee and/or any Design Professional for any Professional Services rendered.

OTHER PROGRAMS

Lessee shall comply, and shall cause its contractor, architect/design professionals, and all subcontractors, sub-consultants, sub-Lessees and licensees to comply, with the Lessor's Small Business Enterprise ("SBE") Programs including, without limitation, SBE-Construction, SBE-Architectural and Engineering, SBE-Goods, SBE-Services, Responsible Wages and Benefits Program, the Community Workforce Program, 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. Prior to advertisement and entering into any design or construction contract for the Project, and in the case of a design or construction management contract, prior to the authorization of any design or construction package, the Lessee shall deliver the proposed contract and design and construction package to the Small Business Division of the Internal Services Department of the Lessor ("SBD") for a determination and recommendation 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 ("Applicable Measures"). Lessee shall include the Applicable Measures in design and construction documents, as applicable, and shall adhere to those Applicable Measures in all design and construction activities. Lessee shall incorporate in all design and development contracts the prompt payment provisions contained in the Code with respect to SBE entities. Lessee 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. Lessee 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 Project, and any Project enhancements. Lessee shall comply with the SBE requirements during all phases of construction of the Project. Lessee shall require its contractor(s) to include Responsible Wages, and

Workforce Programs requirements in all subcontractor agreements. Should the Lessee fail to comply with any of the SBE requirements, Lessee shall be obligated to make up such deficit in future phases of construction of the Project, and/or pay the applicable monetary penalty pursuant to the Code.

CONFORMITY OF PLANS

Preliminary plans and construction plans and all Work by Lessee with respect to the Demised Premises and to Lessee's construction of thereon shall be in conformity with the Lease Agreement, the design criteria package, applicable building codes, and all other applicable federal, state, county and local laws and regulations, including applicable provisions of the Haulover Park General Plan and Article 7 of the Miami-Dade County Home Rule Amendment and Charter. It should be noted that the Haulover Park General Plan contains minimum requirements and the County may impose more stringent requirements if the County reasonably determines that more stringent requirements are warranted to adequately protect the Site and its operation.

LESSEE'S OBLIGATIONS

PROS approval of any concept plans pursuant to this subsection shall not relieve Lessee of its obligations under law to file such plans with any department of the County, or any other governmental authority having jurisdiction over the issuance of building or other permits and to take such steps as are necessary to obtain issuance of such permits. Lessor agrees to cooperate with Lessee in connection with the obtaining of such approvals and permits. Lessee acknowledges that any approval given by Lessor, shall not constitute an opinion or agreement by Lessor that the plans are structurally sufficient or in compliance with any laws or ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon the County. Lessee shall 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.

DEVELOPMENT PHASE

Lessee shall have the right to develop the Site and to perform construction in connection with such development, subject to the terms and conditions of the Lease Agreement and this Development Rider.

1) Design Phase:

The Lessee, at its cost, shall prepare and deliver to PROS a schedule; a total development cost estimate; and three (3) sets of schematic design plans and a computer-aided design and drafting (CADD) file in compliance with the CAD Standards, Survey Standards, PDF, and CD-DVD Requirements referenced in this Development Rider for the construction of the Project prepared by an architect and/or engineer licensed to practice in the State of Florida, and outline specifications comprising the schematic design plans for the Project. The schematic design plans shall be delivered to PROS no later than four (4) weeks from the Lease Effective Date.

Within 14 Days after PROS receives schematic design plans, the Department shall either approve of them or deliver to Lessee specific corrective comments. PROS shall not be unreasonable in exercising its approval rights hereunder.

2) Design Plans; PROS Review and Approval Process:

- (A) Lessee shall submit design and construction documents to PROS for review, coordination and approval at the different stages of the Project. For each submittal, Lessee shall submit three (3) full-sized or half-sized sets of prints and an electronic copy with the date clearly noted.
- (B) At 15% of the overall design completion of the Project, Lessee shall submit conceptual Site layouts and plans, sections, and elevations to PROS for review in conformity with applicable building codes, federal, state, county and local laws and regulations.
- (C) At 85% design completion of the Project, Lessee shall submit drawings, conceptual Site layouts and plans, sections, elevations and pertinent documentation to PROS for review.
- (D) At 100% design completion of the Project, Lessee shall submit to PROS the Final Design Plans. PROS shall review these plans to ensure that all previous PROS comments to which the parties have agreed have been incorporated therein. However, Lessee may request reconsideration of any comments made by PROS.
- (E) Upon receipt of each of the above-mentioned submittals, PROS shall review same and shall, within thirty (30) days after receipt thereof, advise Lessee in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Lessee shall, within thirty (30) Days after the date Lessee receives such disapproval, make those changes necessary to meet PROS's stated grounds for disapproval or request reconsideration of such comments. Within thirty (30) business days of PROS's response to such request for reconsideration, Lessee shall, if necessary, resubmit such altered plans

to PROS. Any resubmission shall be subject to review and approval by PROS, in accordance with the procedure herein above provided for an original submission, until the same shall receive final approval by PROS. PROS and Lessee shall in good faith attempt to resolve any disputes concerning the plans in an expeditious manner.

- (F) Upon the approval of the Final Plans for the Project, such design shall be the construction plan for the Project. PROS's approval shall be in writing and each party shall have a set of plans signed by all parties as approved. In the event any change occurs after approval of the Final Plan, then Lessee must resubmit the changed portion of the construction plans for PROS's reasonable approval (unless the change is required by another Miami-Dade County department as part of the permitting process).

3) Final Plans:

Lessee shall give Lessor final Site and elevation plans prior to submittal for the building permits. All Construction Plans must be in conformity with the Final Design Plans approved by PROS and the procedure described above in this Lease.

The Lessee, at its cost, shall prepare and deliver to the PROS Department a schedule; a total development cost estimate; and three (3) sets of Final Plans and a computer-aided design and drafting (CADD) file in compliance with the Department's CAD Standards, Survey Standards, PDF, and CD-DVD Requirements referenced in this Development Rider for the construction of this Project. Items noted above must be prepared by an architect and/or engineer licensed to practice in the State of Florida, and specifications comprising the Final Plans for the Project. The Final Plans must be consistent with the approved concept plans.

The Final Plans shall show without limitation any/all Work to be performed in the field, including site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress, 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 and about any effect the Project shall have on the Park, hereinafter referred to as Final Plans. Additionally, such Final Plans shall be in strict adherence to applicable law. The Food Service Operation, as applicable, shall be designed to be constructed within the areas specified in **Exhibit E, Site Map**. The Lessee shall also be responsible for all off-site improvements required to accomplish the construction and occupancy of the Project, including utilities and infrastructure needs. The Project shall be aesthetically and functionally compatible with the setting of the Park.

Within 21 Days after the Department receives Final Plans, the Department shall either approve of them or deliver to Lessee specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder.

The Lessee shall resolve all comments and requests for modifications by PROS to the Final Plans and obtain written approval from the PROS prior to submitting the Final Plans to the regulatory agencies for permitting. If the parties are unable to resolve any objections by PROS to the Final Plans within 60 Days after Lessee has received PROS' comments, then PROS shall have the right to terminate the option of Lessee to construct the Food Service Operation, as applicable, in accordance with such Final Plans. The Lessee may thereafter submit new plans for the review and approval of the County.

The approved Final Plans and all associated addenda and attachments shall be incorporated into the Lease Agreement by reference.

4) Permits:

When the Lessee receives the County's written approval of the Final Plans, Lessee shall immediately commence seeking from all regulatory agencies having jurisdiction over the Park and the Project all such required permits. Lessee shall exercise due diligence in processing and procuring such permits.

The Lessee shall keep the Capital Project Manager informed of the progress during the permitting phase and coordinate with PROS to ensure that permitting requirements are acceptable to the Department when said requirements will materially modify the Work or aesthetics of the Project or its location within the Park. The Final Plans shall not be materially changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

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

If Lessee is unable to obtain such permits within 180 Days from the date Lessee receives the County's approval of the Final Plans, the County shall have the right to terminate the Lease Agreement upon notice to the Lessee pursuant to the termination terms in the Lease Agreement. The County shall have the right, in its sole discretion, to extend the time within which Lessee must obtain such permits. However, the County shall be under no obligation to grant said extensions of time.

Within 10 Days from the date that the Lessee obtains all permits, the Lessee shall submit copies of all permits to the County.

SELECTING A CONTRACTOR AND AWARDING A CONTRACT

The Lessee shall enter into written agreements with the contractor(s) providing construction services for the Project, which agreements shall incorporate, and be consistent with, all of the terms and conditions of this Lease Agreement and be subject to review and approval by the County prior to their execution.

The Lessee shall comply with the County's Ordinances, Resolutions and Code requirements that are applicable to the Project as a condition of awarding the construction contract(s) and this Lease Agreement shall be incorporated into any construction contract and all terms in any such construction contract shall be consistent with the Lease Agreement.

Prior to competitively selecting any contractor, the Lessee shall obtain and the contractor shall meet Community Small Business Enterprise (CSBE) goals established by the County's Review Committee under the County's CSBE Program, as enacted under the County's Ordinance 97-52, as amended, and codified in Section 10-33.02 of the County Code; and Administrative Order 3-22, as amended. The Lessee shall cause the contractor to comply with the County's Resolution No. R-138-10, which mandates that the work of CSBE firms be identified in the Schedule of Values (SOV); and the requirements of Resolution No. R-1386-09 pertaining to sub-contracting. The Lessee shall submit its Schedule of Intent (SOI) for approval prior to commencing construction, and comply with the reporting requirements of the CSBE Program. For purposes of the Lease Agreement, SOV is defined as a detailed breakdown of each lump sum bid item in the bid form indicating a complete breakdown of labor and material for all categories of Work - shall include such items as building permit, mobilization, insurance, contractor administration, supervision, etc. The SOV shall be used as the basis to determine monthly progress payments. For purposes of the Lease Agreement, the SOI is defined as a listing of all Small Business Enterprise (SBE) sub-contractors that will be utilized for Work on the Project (form SBD 400).

The Lessee shall obtain and the contractor shall meet Community Workforce Program (CWP) goals established by the County's Review Committee under the County's CWP, as enacted under Ordinance 03-01 and 03-27, if applicable.

The Lessee shall not discriminate against any employee or applicant for employment in the performance of the Work with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except when based on bona fide occupational qualifications; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts/subcontracts shall include the above non-discrimination provisions.

The Lessee shall cause the contractor to comply with the requirements of the Ordinance and Code required affidavits and shall submit the executed documents to the Capital Project Manager for review and approval prior to awarding a contract.

Within ten (10) Days from the date that the Lessee obtains all permits, the Lessee shall submit copies of all permits, cost estimate, proof of compliance with the contractor selection process, SOI, SOV, and schedule indicating start and completion dates, major milestones regarding construction of the Project and constraints. Within 30 Days after the County receives copies of all permits, proof of compliance with the contractor selection process, SOI, SOV, and project schedule, the County shall either approve them or deliver to the Lessee specific written corrective comments. The County shall not be unreasonable in exercising their approval rights hereunder. If corrective comments are issued as provided above, then once all comments have been satisfactorily addressed by the Lessee, the County shall issue a Notice-to-Proceed - 1 (NTP-1) to the Lessee.

The contractor shall have fifteen (15) Days from the date of the NTP-1 to submit all required insurances and bonds to the Department prior to commencing construction. Within fifteen (15) Days after the County receives the required insurance and bonds, the County shall either approve them or deliver to the Lessee specific written corrective comments. Once the County reviews and approves the insurances and bonds it will issue a Notice-to-Proceed - 2 (NTP-2) to the Lessee.

The Lessee shall schedule a pre-construction meeting with the Capital Project Manager prior to mobilization. The pre-construction meeting shall serve to review and discuss the upcoming construction activities and any forthcoming impact to Park operations. Upon agreement by the Capital Project Manager to all construction work activities and the associated logistics and timing, the County will issue

the Authorization to Occupy the Site. Upon issuance of the Authorization to Occupy the Site, the County shall release the Demised Premises to the Lessee.

The Lessee shall, without delay, pursue commencement of construction and diligently pursue completion thereof, subject to force majeure. The construction of the Food Service Operation, as applicable shall be in accordance with the approved Final Plans and shall be completed within 6 months of the date of the NTP-2 for construction.

PRE-CONSTRUCTION REQUIREMENTS

Prior to construction:

- (A) Lessee shall comply with the PROS Department's submittal and review process by submitting the preliminary plans of the Project at the appropriate stage of the Project;
- (F) Lessee shall have submitted to Lessor the payment of Initial Rent as defined in the Lease Agreement.
- (G) The drawings and calculations shall have sufficient detail to allow PROS to determine if such activities are likely to impact the Park and the extent of that impact, if any. The drawings and calculations shall include, if applicable, but not be limited to, the following:
 - (i) Site plan;
 - (ii) Drainage area maps and calculations;
 - (iii) Sheeting and shoring drawings and calculations;
 - (iv) Architectural drawings for the Food Service Operation and Optional Fishing Pier, if applicable
 - (v) Sections showing foundations in relation to Site structures;
 - (vi) Structural drawings;
 - (vii) Pertinent drawings detailing possible impacts on the Park;
 - (viii) Geotechnical reports;
 - (ix) Settlement monitoring, mitigation and remediation plan; and
 - (x) Proposed sequence of activities.

Lessee shall submit three (3) sets, full-sized or half-sized print copies and an electronic copy of all such plans, drawings and calculations.

Any such proposed construction, excavation, demolition, restoration, testing or staging may commence only after PROS has completed its review and the PROS Director or designee has issued written approval of the plans, drawings and calculations.

Lessor shall review plans, drawings and calculations within a reasonable period of time; however, such review periods may depend upon the volume, complexity and potential impact to the Park. Lessor reserves the right at all times to disapprove of plans, drawings and calculations in whole or in part if Lessor, in its sole discretion, determines that operations or facilities may be unacceptably impacted and/or to request additional information. If the Lessor, in its sole discretion, determines that activities undertaken or authorized by the Lessee, or planned to be undertaken or authorized by the Lessee, may impact the Park, facilities or operations, the Lessor may require the Lessee to submit a plan to monitor, mitigate and remediate any such impacts. The plan must be approved by the Lessor in writing prior to the commencement of any such activities. If directed by the Lessor, the Lessee must immediately mitigate all such impacts as specified by the Lessor and Lessee shall immediately remediate all damage or impacts caused by activities performed or authorized by the Lessee, to the satisfaction of the Lessor, at Lessee's sole expense. Additionally, the Lessor shall have the right to slow or stop any activities that the Lessor, in its sole discretion, determines to be potentially hazardous to the Park, facilities, and/or operations or to Miami-Dade County employees, patrons or to the public. Lessor shall not incur any expense as a result of such actions.

CONSTRUCTION PHASE

The Lessee shall be responsible for the construction of the Food Service Operation, as applicable, substantially in accordance with the approved Final Plans; the quality and workmanship shall meet or exceed the specifications; and the Work shall comply with all applicable regulatory permits, authorizations and laws. The construction shall not be materially changed without the Capital Project Manager's approval, which approval shall not be unreasonably withheld or delayed. Such approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications is required.

1. All construction shall be performed by licensed contractors and Subcontractors approved by the County, such approval shall not be unreasonably withheld. If not approved within 15 Days, the County waives their approval rights. The Lessee shall provide the County with a true copy of its contract with the general contractor showing a breakdown of costs and

including all the requisite insurance and bonding criteria. Such contract shall give the County the right, but not the obligation, to assume the general contractor's obligations and rights, if the general contractor should default thereunder.

2. During the construction phase, the Capital Project Manager shall attend weekly construction meetings, as needed, and periodically visit the Site to review the progress of construction to ensure adequate performance and conformity with the approved Final Plans. The Capital Project Manager shall review all shop drawing submittals for conformance with the Final Plans.
3. Any limitations of ingress/egress to the Park must be approved in writing by the County.
4. In addition to the regular weekly construction meetings, the general contractor shall schedule and coordinate a pre-construction meeting, a 50% progress meeting, a 75% progress meeting and a 100% substantial completion walk-thru meeting with the Capital Project Manager.
5. The Capital Project Manager shall provide input to the construction punch-list items and shall coordinate with the general contractor and Lessee for the final acceptance of the Project once all Work has been completed and all permits have been approved and closed by all regulatory agencies having jurisdiction.
6. Upon completion of construction of the Food Service Operation, as applicable, Lessee shall, at its cost, obtain a survey of the Food Service Operation, as applicable and surrounding impacted areas and deliver said survey to the Department, along with one copy of the as built drawings and a CAD file in compliance with the CAD Standards, Survey Standards, PDF, and CD-DVD Requirements referenced in this Development Rider, accurately reflecting the constructed Food Service Operation, as applicable, its supporting infrastructure, and off-site improvements at the Park. A new **Appendix**, based on the as-built information showing the exact location of the Food Service Operation, as applicable at the Park shall be incorporated into the Lease Agreement provided by the Lessee to the County. In addition, the Lessee shall, at its cost, obtain and provide to the Capital Project Manager all warranties and operational and maintenance manuals for the Project.
7. The warranty period warrants the Work to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of final acceptance. Within 30 Days after the one (1) year warranty period, the Lessee shall schedule a walk-thru of the Project with the Capital Project Manager and general contractor, to inspect all construction systems and ensure its intended functionality and life expectancy. After the warranty inspection is completed with satisfactory results as determined by the Capital Project Manager, the close-out period is concluded except as provided for under Florida Statute 95.11 (3) (c).

The Final Plans shall not be materially changed and/or modified without the County's approval, which approval shall not be unreasonably withheld or delayed, subject to force majeure. The County's approval shall not be deemed as a substitute for approval from any regulatory agency which issues permits and whose approval of modifications may be required. All requests for changes shall be coordinated through the Capital Project Manager. The Capital Project Manager will be provided sufficient notice and information (impact to scope, budget, schedule, materials; performance, etc.) to provide timely responses. Lessee will allow unobstructed inspection by the Capital Project Manager to determine compliance with the approved plans and specifications throughout construction. The Lessee shall be responsible to provide any temporary facilities needed in support of its construction of the Food Service Operation and optional Fishing Pier, as applicable.

CHANGES

All requests from the Lessee for material modifications to the plans and/or schedule during any phase of the development process must be submitted in writing to the Capital Project Manager with sufficient documentation to justify said request. PROS will consider the information provided and any mitigating circumstances prior to approving or rejecting said requests. If approval is delayed upon 15 Days, such right shall be waived by the County.

AS-BUILT PLANS

At the completion of the entire Project, Lessee shall provide to Lessor eight (8) full-sized or half-sized sets and an electronic copy of as-built construction plans for any portions of the Project constructed under this Lease Agreement that impact any portion of the Park.

CONNECTION OF BUILDINGS TO UTILITIES

Lessee, at its sole cost and expense, shall install or cause to be installed all necessary connections between the buildings/structures constructed or erected on the Demised Premises, and the water, sanitary and storm drain mains and mechanical and electrical conduits, as well as other utilities, whether owned or not owned by Lessor. Lessee shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed for the Project and for any extension, relocation and/or upgrading of utilities including utilities serving County facilities.

Lessee's obligations hereunder shall be subject to Lessor's good faith efforts hereunder to disclose in writing (and accompanied by plats, surveys, legal descriptions or sketches of surveys to the extent available and known) the location of all recorded or unrecorded easements or licenses affecting the Demised Premises, which disclosure shall be made no later than the Lease Effective Date.

CAD STANDARDS, SURVEY STANDARDS, PDF, AND CD-DVD REQUIREMENTS

This document describes PROS Department standards 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.

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

- Title block
 - All sheets are to have a title block.
 - Title block information is to be on the right side of the sheet.
 - 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**
 - Use PROS CAD Standards. Prefer method is assign **Line weight** by layer no by color.
- Scale and Units
 - All objects are to be drawn at full scale for the assigned unit of measure.
 - 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
 - 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 Contractor 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

Miami-Dade Parks, Recreation and Open Spaces Department

275 NW 2 ST, Miami, FL, 33128

ATTACHMENT A – PROPOSER INFORMATION PACKET

Minimum Qualifications

The following minimum qualification requirement(s) shall be met by the Proposer or Subcontractor(s) assigned to the Project. These minimum qualification requirements shall be maintained until the project Development Phase is completed and accepted by the County.

- Certification as a General Contractor issued by the State of Florida Construction Industry Licensing Board pursuant to the provisions of Florida Statutes Section 489.115; or
- Certificate of Registration as a General Contractor issued by the State of Florida Construction Industry Licensing 489.117; and, hold a Certification of Competency as a General Contractor issued by the Miami-Dade Construction Trades Qualifying Board pursuant to the provisions of Section 10-3 (a) of the Miami-Dade County Code; or
- Hold a Certification of Competency as a General Engineering Contractor issued by the Miami-Dade Construction Trades Qualifying Board pursuant to the provisions of Section 10-3 (a) of the Miami-Dade County Code.

Note: Any Work must be performed by a State of Florida or Miami-Dade County licensed contractor in the specific trade applicable (electrical, plumbing, mechanical, etc.).

Proposer's Approach to Providing Management and Operation of the Site

1. Proposer(s) shall provide a complete management and operation plan for the Site, detailing staffing levels, hours of operation, inventory management, site maintenance (to include pest control, janitorial services and grounds maintenance), customer care including complaint resolution, ADA accommodations, security plan, emergency plan and any other site-related facet of management applicable to the Site, ensuring complete satisfaction for visitors to the Site.
2. Explain what products and services will be offered at the Site, and how the Site concept will appeal to Park patrons. Provide lists and photos of potential services or products where available.
3. Proposer(s) shall provide a listing of Concessions to be made available within the vicinity of the Site, including merchandise that will be offered at each Concession, with photos of products when possible, display concepts of the Concession stand and how it ties into the Miami Moderne style. Proposers shall also describe how the Concession concept relates to the Site.
4. Proposer(s) shall provide a list of all special events to be offered at the Site, including event coordination plan.
5. Proposer(s) shall describe a marketing plan for the Site, including approach to managing communications with the community, organizations, and corporate sponsorships.
6. Proposer(s) shall provide sample employee and management performance standards and procedures, including training programs.
7. Proposer(s) shall provide a plan that describes the transition process from the development to the operation phase.

Commented [E](1): Is this still part of the scope of work?

Proposer's Approach to Provide the Design, Development and Construction of the Site, including Timeline for Completion in Accordance with the Haulover Park General Plan

8. Proposer(s) shall provide a Project schedule identifying specific key tasks and duration, including a timeline for the Food Service Operation completion which describes all phases, including but not limited to design, development, pre-construction studies, funding plan, permits, approvals that are required; construction, operation, maintenance, renewal/handback, etc.
9. Proposer(s) shall provide details outlining Proposer's project plan for development of the Site. Provide renderings that demonstrate the design of the Site, inclusive of key architectural features. The renderings should be photo simulations of the proposal including parking upgrades, restroom locations, greenways, open spaces, pedestrian walkways and signage.
10. Proposer(s) shall describe the strategy to obtain, at a minimum, a Silver certification from LEED. Describe the energy efficient features that are planned to be incorporated into the development of the Food Service Operation.
11. Proposer(s) shall provide a market analysis of the Park inclusive of any potential regulatory and/or legal challenges and methods of dealing with such challenges.
12. Proposer(s) shall describe in detail the safety controls implemented during the construction phase. Provide a copy of the OSHA form 300 detailing the Proposer(s) safety data information. Provide preliminary action plans for emergencies, including fire, acts of nature, fuel spills, etc. with correction action readily available, in accordance with all legal requirements.
13. Proposer(s) shall describe in detail the measures to be taken to identify, monitor, mitigate and remediate any negative impacts to traffic, lane closures, vehicular and pedestrian traffic patterns, and the neighborhood (i.e. noise, lighting, potential worksite hazards, etc.) during construction.
14. Proposer(s) shall describe the security measures put in place during the design and development of the Food Service Operation.

Commented [EJ(2)]: Please review, conditions have changed.

Proposer's Financial Capability

15. Proposer(s) shall provide proof of adequate financial strength and working capital to provide for all the costs associated with the development and operation of the Site. Proposer shall provide its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
16. Proposer(s) shall provide a letter of intent (or a commitment letter) from a lender indicating its willingness to lend an amount necessary for development and operation of the Site, or other documents that detail all sources of capital, operations, and maintenance funds indicating sufficient financing to complete the Site, and any additional improvements.
17. Proposer(s) shall provide, at a minimum, a 15-year period pro-forma, to include pre-development, construction and operating expenses. Include a detailed cash flow statement, by each major activity of work, if applicable. The following projections should also include:

- a) Financing
 - i) Construction loan rate, term and amount
 - ii) Permanent loan rate, term and amount
 - iii) Loan to value ratio
 - iv) Equity
- b) Construction Costs
 - i) Total hard costs
 - ii) Total soft costs
- c) Operating / Maintenance Costs
Operating expenses shown in total dollars, dollars per gross square foot and as a percentage of revenues.
- d) Revenues
 - i) Food Service Operation
 - ii) Value Added Improvement/other revenues
 - iii) Total gross revenues
 - iv) Total net revenues
- e) Returns
 - i) Proposer's internal rate of return
 - ii) Return on investment
 - iii) Return on equity

18. Proposer(s) shall state whether the company operates as a subsidiary of another company. If the Proposer is operating as a subsidiary of another company, then include the parent company's financial information, to include audited financial statements for the last three (3) years. If so, describe the company's financial relationships and responsibilities with regard to parent, subsidiary, partnership contract, joint venture, or other related format or affiliation.

Proposer's and Key Personnel's Including Subcontractor's Relevant Experience, Qualifications and Past Performance as it Relates to the Management, Operation and Maintenance of Similar Projects

19. Proposer(s) shall provide the number of years it has been in existence, the current number of employees, and the primary markets served.
20. Proposer(s) shall provide an organizational chart and resumes which highlight all key personnel, years of experience, certifications and licenses for the Management/Operations Team. All key personnel includes partners, managers, seniors, subcontractor/subconsultants and other professional staff assigned to this Project.
21. Proposer(s) shall state if within the past five (5) years, your firm ever been involved in a bankruptcy proceeding, issues, claims or problems that have arisen and remain unresolved? If so, please provide detail and outcome.
22. Proposer(s) shall provide a list all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of

work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) County contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project.

Proposer's and Key Personnel's including Subcontractor's Relevant Experience, Qualifications, and Past Performance as it Relates to the Design, Development, and Construction of Similar Projects

23. Provide the Proposer, key personnel, and subcontractors/subconsultants' relevant experience, qualifications, capabilities and past performance in design, development, and construction of similar projects to those referenced in the Solicitation. The description of each project should include at minimum the following: (i) contract name, (ii) entity, (iii) description of scope of services, (iv) contract value, (v) contract term, (vi) contact person information, (vii) statement of whether Proposer was the prime contractor or subcontractor, and (viii) contract outcome.
24. Proposer(s) shall provide an organizational chart and resumes for the Development Team which highlights all key personnel that will be assigned to this Project. All key personnel includes partners, managers, seniors, subcontractor/subconsultants and other professional staff.
25. Proposer(s) shall state if within the past five (5) years, a government or private entity or individual has terminated a contract prior to completion of a project? If so, please provide details of the circumstance and the principal contact information.

PROPOSERS SUSTAINABLE PRACTICES (environmental, social/fair labor standards, and economic)

27. Provide a plan for sustainable practices at the Site including:

- a. Environmental standards
- b. Social/Fair Labor standards
- c. Economic standards
- d. Strategic (long-term) goals

Exceptions

Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s). Only those exceptions identified herein will be considered by the County. Exceptions not specifically delineated will not be accepted from any Proposer(s) that may be invited to participate in Negotiations as outlined in Section 4.8 of the Solicitation. It is recommended that any exceptions taken be listed on a separate page and clearly labeled.

ATTACHMENT B – REVENUE SCHEDULE

INSTRUCTIONS

Submit the proposed payment to the County using this document, in the manner stated herein; there is no exception to this requirement. Proposers shall propose a payment structure through the proposed combination of Initial Rent, Guaranteed Annual Rent and Participation Rent.

1. INITIAL RENT

The Lessee shall pay a monthly Initial Rent to the County commencing on the Lease Effective Date through the issuance of the Certificate of Occupancy. Payment shall be received by the County on or before the 5th day of each month.

\$ _____ **INITIAL RENT**

***Note: Proposers are to enter above the monthly Initial Rent rate to be paid to the County.**

2. GUARANTEED ANNUAL RENT

Upon the date of the issuance of the Certificate of Occupancy, the Lessee shall pay the Guaranteed Annual Rent, listed below, in twelve (12) equal monthly payments, until the expiration of the Lease Agreement and any extensions thereof.

\$ _____ **GUARANTEED ANNUAL RENT**

3. PARTICIPATION RENT

In addition to the Initial Rent and Guaranteed Annual Rent, Participation Rent shall be paid to the County **monthly**. Participation Rent shall be a Percentage of Gross Revenue generated by the Food Service Operation in accordance with the terms of the resulting Lease Agreement.

_____ **% PARTICIPATION RENT**

***Note: Proposers are to enter above the monthly Participation Rent to be paid to the County.**

Miami-Dade County, FL

Contract No.

**HAULOVER MARINA FRONT FOOD SERVICE
OPERATION
DRAFT LEASE AGREEMENT**

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- EXHIBIT C: SITE MAP

Haulover Marina Front Food Service Operation
Contract RFP-02171

Recitals Page

This Development, Management and Operation Agreement made and entered into as of this _____ day of _____, _____ (Lease Effective Date) by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Lessee" and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County", or "Landlord"),

WITNESSETH:

Landlord owns and controls certain real property located at 10800 Collins Avenue, Miami Beach, FL., 33154 ("Haulover Park"), as more particularly described in **Exhibit "A"** attached hereto and made a part hereof. As of the Lease Effective Date, Landlord, by and through the Miami-Dade County Parks, Recreation and Open Spaces Department, (PROS) maintains operational control of the Park.

Landlord has recognized the potential for public and private benefits through the development of the Site, as described by the Proposal, in accordance with Exhibit ____.

Lessee submitted to Landlord its technical proposal in response to a Request for Proposals (RFP – 02171) for the development of the Site, which response was selected by the Landlord as being the most appropriate use for the Site.

Landlord therefore desires to lease the Property to the Lessee, in its "as-is" "where-is" condition, to enable the Lessee to develop the Property consistent with the Proposal, and as provided for in this Lease. Lessee desires to lease the Property, in its "as-is" where-is" condition, from Landlord for such purposes.

Landlord and Lessee mutually covenant and agree that this Lease is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used herein in this Lease without being defined elsewhere herein shall have the definitions set forth in Article 2 hereof.

ARTICLE 1. PREMISES - GENERAL TERMS OF LEASE

1.1 Lease of the Property: In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to the authority properly delegated by the Florida legislature; and (c) the authority to lease real property over real property belonging to Miami-Dade County; and, for and in consideration of the rents, covenants and agreements specified herein, the Landlord agrees, pursuant to the terms of this Lease, and does hereby lease unto Lessee, its successors and assigns, and Lessee does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Property with any and all faults; reserving to the Landlord the rights described herein; to have and to hold the same unto Lessee, its successors and assigns, for the Term (as defined herein below). Lessee shall have and hold, exclusively, the development rights pertaining to the Property, subject to the terms, conditions, covenants and procedures set forth herein. The Property is identified as **Haulover Park – Marina Front Food Service Operation (See Exhibit _)** located at 10800 Collins Ave, Miami Beach, FL. 33154.

1.2 Use of Premises:

- (1) The Demised Premises shall not knowingly be used for the following:
 - (i) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is hazardous or constitutes a legal nuisance of any kind (public or private); or
 - (ii) any purpose which violates the approvals of applicable government authorities.
- (2) No covenant, agreement, lease, Leasehold Mortgage, conveyance or other instrument shall be effected or executed by Lessee, or any of its successors or assigns, whereby the Demised Premises or any portion thereof is restricted by Lessee, or any successor in interest, upon the basis of race, color, religion, sexual orientation, sex or national origin in the sale, lease, use or occupancy thereof. Lessee shall comply with all applicable state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, sexual orientation, sex, or national origin in the sale, lease or occupancy of the Demised Premises.
- (3) Except as otherwise specified, Lessee may use the Demised Premises for any lawful purpose or use authorized by this Lease Agreement and allowed under the Ordinance establishing the zoning for the Demised Premises (provided Lessee otherwise complies with the terms and conditions hereof). Lessee shall not knowingly suffer any act to be done or any condition to exist in or on the Demised Premises or any part thereof or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force with respect thereto.
- (4) Lessee, upon paying all rents, revenues and other monies herein provided for and performing in accordance with the terms, agreements, and provisions of this Lease Agreement, shall peaceably and quietly have, hold and enjoy the Demised Premises during the term of this Lease Agreement without interruption, disturbance, hindrance or molestation by Landlord or by anyone claiming by, through or under Landlord.

1.3 Term of Lease:

- (2) **Lease Effective Date.** The Lease Effective Date shall be referenced on the first (1st) page of this Lease. This Lease shall become effective on the first (1st) day of the month following its approval by the Miami-Dade

County Board of County Commissioners, and the expiration of the ten (10) day veto period by the Mayor of Miami-Dade County; and if vetoed by the Mayor, shall only become effective upon override by the Board of County Commissioners ("Lease Effective Date").

The term of this Lease shall be for a period of thirty (30) years ("Term") beginning on the Lease Effective Date and terminating on the date which is thirty (30) years from the Lease Effective Date, with the Landlord reserving the right to renew the Lease for at most, two (2) additional ten (10) year periods, for a total of fifty (50) years before expiring, ("Expiration Date"), unless earlier terminated or cancelled, as provided for herein. Also, as of the Expiration Date, or earlier termination of the Term, the Property shall be returned back to the Landlord, along with any and all improvements thereon, including any and all fixtures and equipment, shall automatically become the sole property of the Landlord, without any type of compensation, payment, surcharge and/or obligation to the Lessee.

- (2) Possession. Landlord shall deliver possession of the Property to the Lessee on the Lease Effective Date, at which time Lessee shall take possession thereof; provided, however, from and after the Lease Effective Date, Lessee shall have the permission, with the prior written permission of the Landlord, not to be unreasonably withheld or delayed, to enter upon the Property for the purpose of conducting investigations of the Property, which permission shall include the responsibility of the Lessee to hold the Landlord harmless from and against any and all actions, suits, claims and causes of action, and to secure and maintain the appropriate insurance as dictated by the Landlord. Such investigations by the Lessee may include soil tests, hazardous materials tests, and other studies and analyses, and to take such other steps or actions as Lessee deems necessary, as approved by the Landlord, to determine the feasibility (economic or otherwise) of the Project.
- (3) Early Termination by Lessee. As a direct result of the Lessee performing its inspection of the Property, the Lessee shall immediately within thirty (30) Days provide to the Landlord, specifically the Parks, Recreation and Open Spaces Department, with a courtesy copy of the result of any and all testing performed on the Property, including, but not limited to soil compaction testing, radio frequency testing, soil and/or groundwater environmental testing, etc. In the event that the Lessee determines, based upon the results of its testing, and other inspections and studies, which the development of the Project is not legally feasible, the Lessee shall have the right, within one hundred eighty (180) Days of the Lease Effective Date, to terminate this Lease upon written notice to the Landlord.

1.4 Documents Incorporated and Order of Precedence: Landlord and Lessee acknowledge that Miami-Dade County issued a Request for Proposals to develop, finance, design, construct, operate and maintain the Site, that Lessee submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and Lessee's Proposal were the basis for award of this Lease and upon which the Landlord has relied. The Request for Proposals and Lessee's Proposal are incorporated herein by this reference. If there is a conflict between or among the provisions of this Lease, the Request for Proposals and the Proposal, the order of precedence is as follows: (i) the terms of this Lease; (ii) the Proposal, (iii) the Request for Proposals.

1.5 Conditions Precedent to Effectiveness of Lease: The Miami-Dade County Board of Commissioners shall have approved the execution of this Lease.

1.6 Development Concept: The Landlord and Lessee have agreed that the Lessee shall construct on the Property a **Food Service Operation**.

Lessee shall have the right and privilege of designating name by which the Food Service Operation shall be known.

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1.7 Leasing and Concession Operations Within an LWCF Boundary Area: A project sponsor may provide for the operation of a LWCF boundary area by leasing the area/facility to a private organization or individual or by entering into a concession agreement with an operator to provide a public outdoor recreation opportunity at the Fund-assisted site.

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As the principal grantee, the State is ultimately accountable for assuring compliance with the applicable federal requirements, and, therefore, the delegation or transfer of certain responsibilities to subrecipients or lessees does not relieve the State of its compliance burden. As the grant recipient, the State has agreed to provide suitable replacement property should the public use of the leased or concessioned area/facility be restricted or the outdoor recreation resource be compromised.

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All lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

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1. In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee/concessioner and terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met.

2. The lease/agreement document should clearly indicate that the leased/concessioned area is to be operated by the lessee/concessioner for public outdoor recreation purposes in compliance with provisions of the LWCF Act and implementing regulations (36 C.F.R. Part 59. As such, the document should require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and is operated by a lessee/concessioner as identified in the public information to eliminate the perception the area is private.

3. The lease/agreement document should require all fees charged by the lessee/concessioner to the public must be competitive with similar private facilities.

4. The lease/agreement document should make clear compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

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ARTICLE 2. DEFINITIONS

The terms set forth below, when used in this Lease, shall be defined as follows:

ADA shall mean the Americans with Disabilities Act, as amended from time to time.

Agreement or Contract to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. RFP 02170 and all associated addenda, and the Lessee’s Proposal.

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Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.

Business Hours to mean the operating hours that the Park remains open; from sunrise to sunset, with the office being available for inquiries between 8:00AM and 5:00PM

Certificate of Occupancy (COO) or Temporary Certificate of Occupancy (TCO) shall mean the certificate issued by the appropriate code enforcement agency that enables the Lessee to occupy or utilize the premises for revenue generating purposes.

Code shall mean the Code of Miami-Dade County, as amended from time to time.

Commencement of Construction and "commenced" when used in connection with construction shall mean the earlier of the filing of the notice of commencement under Florida Statutes Section 713.13 or the visible start of Work on the site including on-site utility, excavation or soil stabilization, excluding any utility Work authorized by Article 1. In order to meet the definition of "Commencement of Construction" or commenced herein, such filing of notice or visible start of Work must occur after Lessee has received a building permit for the Project.

Completion of Construction shall mean the date a Certificate of Occupancy is issued.

Concession(s) shall mean a stand-alone booth or cart, permanent or portable that can accommodate the sale of goods and services such as food, beverages (both alcoholic and non-alcoholic), souvenirs, apparel, novelties, publications and merchandise and other items, goods equipment, (including mechanical electrical or computerized amusement devices), and wares which may be sold by Lessee or concessionaire to Park visitors.

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Contract Manager to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.

Construction Plans shall consist of final design plans for particular improvements as approved by Miami-Dade County, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits for such improvements.

County to mean Miami-Dade County, a political subdivision of the State of Florida.

Date of Beneficial Occupancy to mean the date after which the Food Service Operation is complete and a Certificate of Occupancy is issued.

Days to mean calendar days.

Deliverables to mean all documentation and any items of any nature submitted by the Lessee to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

Demised Premises, Premises shall mean the Land rights, if applicable, leased to Lessee pursuant hereto, which shall be subject to the provisions of this Lease

RESERVING UNTO LANDLORD, subject to the remaining provisions of this Lease, the following:

- (i) the permanent and perpetual non-exclusive right of ingress, egress and passageway in, over, through the Demised Premises which shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from the Site;
- (ii) all subsurface rights under the sidewalks, streets, avenues, curbs and roadways fronting on and abutting the Demised Premises subject to Lessee's rights described in subparagraph (iii) of this definition; and

(iii) the permanent and perpetual non-exclusive right to use and occupy the Site located in the Park.

Directed, required, permitted, ordered, designated, selected, prescribed or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words approved, acceptable, satisfactory, equal, necessary, or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

Extra Work or Additional Work to mean additions or deletions or modifications to the amount, type or value of the Services as required in this Contract, as directed and/or approved by the County.

Fishing Pier to mean a an optional structure leading out from the shore into a body of water.

Food Service Operation to mean a food and beverage establishment with indoor/outdoor dining and seating that caters primarily to the outdoor recreating public.

Gross Revenue to mean all monies received, generated, or derived from the Site, directly or indirectly, covered under this Agreement.

Guaranteed Annual Rent shall mean rent paid by the Lessee to the County from the date of Beneficial Occupancy through the termination date of this Agreement, including any and all increases and/or escalations in such rent.

Haulover General Plan to mean the park plan approved by the Board that sets general guidelines for use with regard to public need for facilities, its impact upon the surrounding community, and other similar considerations.

Haulover Park and the Park to mean an approximately 232-acre property, 1.4 miles in length, identified by Folio 30-2214-008-0010, located at 10800 Collins Avenue in unincorporated Miami-Dade County.

Hours of Operation to mean the schedule proposed and approved by PROS when the Food Service Operation will be permitted to operate.

Impositions shall mean all ad valorem taxes, special assessments, sales taxes and other governmental charges and assessments levied or assessed with respect to the Demised Premises and the activities conducted thereon or therein, except for such taxes, assessments and charges as they relate to the Land or improvements of Landlord located on the Demised Premises which shall be the responsibility of Landlord.

Initial Rent to mean rent paid by the Lessee to the County during the period between the date the parties entered into this Lease Agreement and one (1) day before the date of Beneficial Occupancy of the Development Project, or that portion of the Development Project covered under this Lease Agreement resulting from this Solicitation.

Landlord shall mean Miami-Dade County, a political sub-division of the State of Florida, through the Miami-Dade County Parks, Recreation and Open Spaces Department.

Lease shall mean this Lease and all amendments, supplements, addenda or renewals thereof.

Lease Effective Date to mean the date on which this Agreement is effective as listed on the Recitals page.

Leasehold Mortgage shall mean a mortgage or other encumbrances executed by the Lessee in connection with financing for the Project.

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Leasehold Mortgagee shall mean the recognized lending institution meeting the requirements specified in this Lease Agreement that is or becomes the holder, mortgagee or beneficiary under a Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any such trust indenture and the successors or assigns of such trust.

Lease Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the first day of the first month following the Lease Effective Date and upon each anniversary of such date thereafter provided that Landlord may cause the Lease Year to be a calendar year.

Lessee to mean the Proposer that receives any award of a Lease Agreement from the County as a result of this Solicitation, also to be known as “the prime Contractor”.

The Acronym “LWCF” to mean the Land and Water Conservation Fund Act.

Miami Moderne to mean an art deco style characterized by bright colors and geometric shapes. Guidelines for “Miami Moderne” can be found in Exhibit B – Design Criteria Package.

Participation Rent to mean a percentage of the Gross Revenue to be paid as rent.

Permit shall mean any permit issued or to be issued by the appropriate agency or person, including but not limited to applicable permits for construction, demolition, installation, foundation, dredging, filling, the alteration or repair or installation of sanitary plumbing, water supply, gas supply, electrical wiring or equipment, elevator or hoist, HVAC, sidewalk, curbs, gutters, drainage structures, paving and the like.

Project Manager to mean the Miami-Dade County Parks, Recreation and Open Spaces Department Director, or duly designated or otherwise authorized representative.

Proposal to mean the properly signed and completed written good faith commitment by the Proposer submitted in response to this Solicitation by a Proposer for the Services, and as amended or modified through negotiations.

Scope of Services to mean the document appended hereto as Appendix A, which details the Work to be performed by the Lessee.

Site to mean the land made available to the Lessee for the Food Service Operation

Subcontractor or Subconsultant to mean any person, firm, entity or organization, other than the employees of the Lessee, who contracts with the Lessee to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Lessee.

Turnkey to mean the totality of the Project, inclusive of development, finance, design, construction, operation, maintenance and management.

Work, Services, or Project to mean all matters and things required to be done by the Lessee in accordance with the provisions of this Lease Agreement.

ARTICLE 3. RENT

3.1 Initial Rent: The Lessee shall pay the County Initial Rent. Initial Rent shall be payable monthly in advance, without notice or billing, on or before the 5th day of each month in an amount equal to one-twelfth of the Initial

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Rent due for the applicable Lease Year.

The Lessee shall pay to the Landlord the amount of _____ (\$ _____) dollars, as an Initial Rent payment, from the Lease Effective Date. Once paid by the Lessee to the Landlord, the Initial Rent shall be non-refundable.

3.2 Guaranteed Annual Rent: From the date of the issuance of the Certificate of Occupancy to the termination date of the Lease Agreement, the Lessee shall pay the County Guaranteed Annual Rent as described below in accordance with the terms of the resulting Lease Agreement. Guaranteed Annual Rent shall be payable monthly in advance, without notice or billing, on or before the 5th day of each month in an amount equal to one-twelfth of the Guaranteed Annual Rent due for the applicable Lease Year.

The Guaranteed Annual Rent to be paid by Lessee to Landlord is Rent equal to the total amount of _____ (\$ _____) dollars annually.

3.3 Participation Rent: The Participation Rent to be paid by Lessee to Landlord is equal to ____% percent of the Gross Revenues, as defined in Article 2, obtained by the Lessee. Lessee shall prepare and submit to Landlord a separate statement of Gross Revenue for the Demised Premises for each Lease Year, which shall be in compliance with Generally Accepted Accounting Principles and with the provisions of this Lease Agreement and certified as being accurate by a reputable, independent certified public accountant selected by Lessee. Participation Rent shall be paid to Landlord within one hundred twenty (120) Days after the end of each Lease Year that Participation Rent is due. Thereafter Participation Rent shall be paid on an estimated basis as follows;

- (a) Upon receipt of statement of Gross Revenue from Lessee, the amount of Participation Rent due for that preceding Lease Year shall be divided into twelve (12) equal amounts and one twelfth (1/12) of the amount of Participation Rent due for the past Lease Year shall be paid on the fifth (5th) day of each month for the following Lease Year.

Thereafter, the amount of Participation Rent actually paid during each Lease Year shall be compared to the amount of Participation Rent due for that Lease Year. If the amount of Participation Rent due is greater than what was paid, Lessee shall pay the difference within one hundred and twenty (120) Days after the end of the Lease Year. If the amount of Participation Rent due is less than what was paid, Landlord will credit the difference to the Participation Rent due for the following Lease Year.

3.4 Escalation:

(1) The Guaranteed Annual Rent specified in Article 3.2 is adjustable annually and shall be adjusted by an amount equal to the annual change in the Consumer Price Index, ALL URBAN CONSUMERS ALL ITEMS for Miami/Ft. Lauderdale, Florida, (the "CPI") published by the U.S. Department of Labor in or about each June subject to a maximum annual adjustment of 3%. By way of example, the CPI in June 2020 (or the month closest to such month) shall be compared to the CPI published in June 2019 (or the month closest to such month), and the percentage increase in the June 2020 CPI, if any, shall be the percentage increase to be applied to the Guaranteed Annual Rent specified in Article 3.2 for the period from October 1, 2020 through September 30, 2021, and so on for each annual period of this Lease Agreement.

(2) Upon the determination of the amount of the appropriate CPI adjustment, this Agreement shall be amended by a letter to Lessee to reflect the CPI adjustment as of each October 1, (and each annual anniversary thereafter) without formal amendment of this Lease Agreement. Payments for any CPI adjustments shall be due upon billing to

the Lessee by the Department and payable by the Lessee within thirty calendar days of same.

3.5 Double Rental: In the event that the Lessee remains in possession of the Premises beyond the expiration or termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement. However, during any such possession of the Premises, as a holdover tenant after the Lessor has demanded the return of the Premises, the Lessee shall be liable for double the **Guaranteed Annual Rent for so long as the Lessee remains in possession after such demand, such payment to be based upon the then applicable Guaranteed Annual Rent in whole or in part to the Premises.**

3.6 Late Payments: In the event that any payment of Rent due Landlord shall remain unpaid for a period of five (5) days beyond their due date, a late charge of five percent (5%) per month of the amount of such payment shall be added to such delinquent payment for each month that the payment remains delinquent. In addition to the rights and remedies provided for herein, Landlord shall also have all rights and remedies afforded by law for enforcement and collection of rent and any late charges which are not inconsistent with the limitations or remedies contained in this Lease. All rent and other payments due Landlord under this Lease shall be paid to Landlord at the address specified herein for notice to Landlord.

3.7 Abatement of Rent: Except as otherwise set forth in this Lease Agreement, Lessee shall not be entitled to abatement, allowance, reduction or suspension of any rent or other payments due to Landlord under this Lease Agreement unless caused by casualty loss beyond Lessee's control or by the negligence or acts or omissions of Landlord and which loss causes disruption of Lessee's business, in either of which events Rent attributable to such partially or totally destroyed portions of the Demised Premises shall be abated, beginning on the date which is fifteen (15) Days after Lessee gives written notice to Landlord of such casualty and continuing for the period necessary to reconstruct the Demised Premises rendered untenable or a period of two (2) years, whichever comes sooner; provided that Landlord, acting through the County Mayor or his designee:

- (a) approves such abatement, which approval shall not be unreasonably withheld;
- (b) the proper documentation is submitted in connection with the relevant Work, and
- (c) any proceeds of business interruption insurance received by Lessee is included in the calculation of Gross Revenue.

Except as otherwise provided in the Lease Agreement, no such damage or destruction shall release Lessee of or from any other obligation imposed upon Lessee under this Lease Agreement.

3.8 Protest Payments: If at any time a dispute shall arise as to any amount or sum of money to be paid by Lessee to Landlord under the provisions of this Lease Agreement, in addition to the rights set forth in this Article, Lessee shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Lessee to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Lessee to pay such sum or any part thereof, Lessee shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease Agreement; and if at any time a dispute shall arise between the parties hereto as to any Work to be performed by either of them under the provisions of this Lease Agreement, the party against whom the obligation to perform the Work is asserted may perform such Work and pay the cost thereof "under protest" and the performance of such Work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Lessee and/or Landlord to seek the recovery of the cost of such Work, and if it shall be adjudged that there was no legal obligation on the part of said Lessee and/or Landlord to perform the same or any part thereof, said Lessee and/or Landlord shall be entitled to recover the cost of such Work or the cost of so much thereof as Lessee or

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Landlord was not legally required to perform under the provisions of this Lease Agreement.

3.9 Approved Restriction Adjustments: Lessee acknowledges that it has performed reasonable due diligence regarding development of the Demised Premises and that, based upon that due diligence, has proposed to develop the Project in substantial accordance with the design criteria package and the proposer's Proposal. Landlord and Lessee acknowledge that the Initial Rent, Guaranteed Annual Rent and Participation Rent established in this Lease Agreement were based on the understanding that Lessee would be able to develop the Project in substantial accordance with the design criteria package and the proposer's development concept. If, due to laws and ordinances enacted subsequent to award of this Lease Agreement, the Lessee is not able to build the Project as described, then in addition to any other rights Lessee has hereunder, (a) Lessee shall have the right to terminate this Lease Agreement and its obligations hereunder by giving written notice to Landlord within ____ months after such inability becomes known to Lessee, and the obligations of Lessee to pay rent under this Lease Agreement shall be abated as of the date of the giving of such notice, and in such event this Lease Agreement shall terminate ____ Days following the Landlord's receipt of notice of termination; and (b) in the event Lessee does not terminate this Lease Agreement, as set forth above, Lessee shall become entitled to an adjustment in rent on an equitable basis taking into consideration the amount and character of the Building space or other aspect of the Project described in the design criteria package and the proposer's development concept, the use of which will be denied to the Lessee, as compared with the building space described in the design criteria package and the proposer's development concept.

3.10 Methods of Payment: The Lessee shall pay, by any of the methods described in this Article, all rentals, fees and charges required by this Agreement:

By mail:

Miami-Dade County Parks, Recreation and Open Spaces Department
Accounting Division
275 NW 2nd Street, 3rd Floor
Miami, Florida 33128

By hand delivery to the offices of the Department during normal working hours to the following:

Miami-Dade County Parks, Recreation and Open Spaces Department
Accounting Division
275 NW 2nd Street, 3rd Floor
Miami, Florida 33128

By electronic funds transfer for immediate credit via wire transfer to:

Bank: **WELLS FARGO BANK, N.A.**
10401 Deerwood Park Blvd., Building # 1
Jacksonville, FL 32256

ABA Number: **121000248**

Swift Code Number: **WFBIUS6S**

Note: International transfers need **SWIFT CODE (BIC)**

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Account Name: Miami-Dade County Parks, Recreation and Open Spaces Department
Bank Account Number: **2696206696688**

Note: Transaction must include the Miami-Dade Parks, Recreation and Open Spaces Department invoice number(s) of charges to be paid.

By electronic funds transfer for next day credit via the ACH (Automatic Clearing House) to:

WELLS FARGO BANK, N.A.
10401 Deerwood Park Blvd., Building # 1
Jacksonville, FL 32256

ABA Number: **121000248**

Account Name: Miami-Dade Parks, Recreation and Open Spaces Department
Bank Account Number: Acct#: **2696206696688**

Note: Transaction must include the Miami-Dade Parks, Recreation and Open Spaces Department invoice number(s) of charges to be paid for each month that the payment remains delinquent. In addition to the rights and remedies provided for herein, Landlord shall also have all rights and remedies afforded by law for enforcement and collection of rent and any late charges which are not inconsistent with the limitations or remedies contained in this Lease Agreement. All rent and other payments due Landlord under this Lease Agreement shall be paid to Landlord at the address specified herein for notice to Landlord.

ARTICLE 4. FINANCING

4.1 Financing of Project: Lessee may secure private financing to provide funds required for the construction of the Project. No mortgage or other encumbrance the Lessee executes in connection with that financing will extend to or be a lien or encumbrance upon Lessor's interest in any part of the site or in any right appurtenant to that interest. Moreover, the Lessor has no obligation to subordinate the Lessor's interest in the site to the lien or security interest of any mortgage or other encumbrance that Lessee may execute on the authority of this Article.

4.2 Lessor Approval of Financing Documents: The Lessor reserves the right to approve the documents memorialising any financing that Lessee secures on the authority of Article 4.1, which approval shall not be unreasonably withheld. Lessee must submit for the Lessor's review and approval drafts of the financing documents in advance of Lessee's execution of those documents or documentation verifying Lessee's ability to self-finance the Project.

4.3 Recording of Leasehold Mortgage: Following the Lessee's execution of a Leasehold Mortgage, if applicable, Lessee shall furnish the Lessor (i) a duplicate original of the Leasehold Mortgage or a photocopy of the Leasehold Mortgage that the Clerk of the Circuit Court for Miami-Dade County, Florida has certified as being a true copy of the Leasehold Mortgage recorded among its real property records, and (ii) a written notice setting forth the name and address of the mortgagees or secured party in whose favour Lessee executed the Leasehold Mortgage.

4.4 Conditions of Leasehold Mortgage: Following the delivery of the documents in 4.3 Recording of Leasehold Mortgage and continuing until the Leasehold Mortgagee releases the Leasehold Mortgage of record, the following provisions will apply:

(1) LESSOR TO GIVE NOTICE OF DEFAULT. At the time that the Lessor gives Lessee written notice of the occurrence of any default in respect of the performance of Lessee's obligations under this Agreement, the Lessor shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices in Article 18 (Notices) at the address for the Leasehold Mortgagee provided to the Lessor. No notice of default to Lessee will be effective until the Lessor delivers the notice required by this Article.

(2) MORTGAGEE'S RIGHT TO CURE DEFAULT. The Leasehold Mortgagee may rectify a default on Lessee's part, but has no obligation to do so. The Lessor will accept the Leasehold Mortgagee's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The Lessor may exercise a remedy available to it by reason of a default on Lessee's part only if Lessee and the Leasehold Mortgagee fail to rectify the default within (a) any time period specifically set forth in Article 5 (Default by Lessee and Termination) of the Lease Agreement for a cure of a particular default, or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Article 4.4(1) above, or if a cure is not reasonably possible within such 30 day period, then within a period of time reasonably required to cure the default through the exercise of prompt, diligent and continuous effort.

(3) TERMINATION DELAYED DURING EXERCISE OF LEASEHOLD MORTGAGEE'S REMEDIES. Even though a default has occurred and neither the Lessee nor the Mortgagee has provided for a cure within the times permitted by Article 4.4(2) above, the Lessor will not terminate the Lease Agreement for a reasonable period of time, not to exceed one (1) year, from the date of termination provided in the Lessor's notice of default, if the Mortgagee is then making: (a) prompt, diligent and continuous efforts to gain possession of the Site and to succeed to Lessee's interest in the Site by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage, together with (b) the payment to the Lessor of all rent and charges due hereunder with respect to which Lessee becomes delinquent and (c) good faith efforts to rectify other defaults contemporaneously with the efforts to gain possession of the Site.

(4) TRANSFER TO A "TRANSFeree" OR "SUCCESSOR LESSEE". A transfer of Lessee's interest in the Site to the Leasehold Mortgagee, or a corporate nominee affiliated with the Leasehold Mortgagee (herein a "nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage (herein a "Transferee") will not constitute an assignment requiring the Lessor's consent under the terms of Article 4.5 (Assignment and Transfer) below. The Transferee may make a subsequent transfer of Lessee's interest in the Premises only with the Lessor's prior written consent as provided in Article 4.5. The Lessor will, however, consent to the subsequent transfer to a Successor Lessee or Lessees if the proposed successor or successors to the Lessee's interest would have been acceptable to the Lessor for the Site in the reasonable exercise of the Lessor's judgment considering the successors experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the Lessor's plan for operating the Site. The parties agree that the Transferee will be subject to the termination provisions of Article 5 (Default by Lessee and Termination). After succeeding to Lessee's interest in the Site, a Transferee that is not a Successor Lessee must use reasonable best efforts to find a Successor Lessee satisfying the criteria set forth above in this Article, but in any event no later than one (1) year following the date of termination provided in Lessor's default notice. If no Successor Lessee or Lessees are found in such one (1) year period to occupy at least 50% of the Site, then all of the Lessee's, Leasehold Mortgagee's and Transferee's interests in the Site shall terminate in their entirety, without any right of recovery or compensation from the Lessor.

(5) NO OBLIGATIONS OF TRANSFeree; LESSOR'S RIGHT TO TERMINATE IF OBLIGATIONS NOT SATISFIED. If a Transferee succeeds to Lessee's interest in the Site by virtue of the Leasehold Mortgagee's

acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to the Leasehold Mortgagee under the terms of the Leasehold Mortgage, the Transferee and its successors and assigns will only have personal liability for the performance of those obligations incumbent upon Lessee under the terms of this Lease Agreement that arise or accrue during the period between the time at which the Transferee succeeds to Lessee's interest in the Site and the time at which it divests itself of that interest. The foregoing limitation will not preclude the Lessor from terminating this Agreement if the Transferee fails to rectify without cost to Lessor any default existing in respect of Lessee's obligations at the time the Transferee succeeds to Lessee's interest in the Site.

4.5 Assignment and Transfer: The Lessee shall not, in any manner, assign, transfer, mortgage, pledge, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights granted to the Lessee herein, without the written approval of the County. The Lessee may make a collateral assignment to a Lender or sell the stock of the business without prior approval of the County. Lessee may also sell substantially all of its assets without prior approval of the County, provided that (a) substantially all of the assets are sold, (b) the purchaser is a single entity that will continue substantially all of the operations permitted or required of Lessee hereunder, and (c) the purchaser meets the County's requirements set forth in this Article. In the event the Lender seeks provisions in the assignment affecting the interests or requiring certain actions by the County, such provisions must be approved by the County; however, such provisions shall not be unreasonably withheld or delayed by the County for so long as the Site remains the same and is assigned or transferred to an entity deemed by the County to be reputable and credit worthy meeting the County requirements stated under Article 4.4(4) (Transfer to a "Transferee" or "Successor Lessee").

4.6 Payment if Right to Develop Demised Premises is Assigned or Transferred: A transfer of Lessee's interest in the Premises to the Leasehold Mortgagee, or a corporate nominee affiliated with the Leasehold Mortgagee (herein a "nominee"), or a purchaser at a foreclosure sale that occurs by virtue of the Leasehold Mortgagee's acceptance of a deed in lieu of foreclosure or the exercise of any remedy available to it under the terms of the Leasehold Mortgage (herein a "Transferee") will not constitute an assignment requiring the Lessor's consent under the terms of Article 4.5 (Assignment and Transfer) above. The provisions of Article 1 Sub-Article 1.2 (Use of Premises) will govern any use of the Premises that occurs prior to and after a transfer to the Transferee. The Transferee may make a subsequent transfer of Lessee's interest in the Demised Premises only with the Lessor's prior written consent as provided in Article 4.5. The Lessor will, however, consent to the subsequent transfer to a Successor Lessee or Lessees if the proposed successor or successors to the Lessee's interest would have been acceptable to the Lessor for the Demised Premises in the reasonable exercise of the Lessor's judgment considering the successors experience, financial strength, history of meeting contractual obligations and intent to implement a business plan consistent with the Lessor's plan for operating the Site. The parties agree that the Transferee will be subject to the termination provisions of Article 5 (Default by Lessee and Termination). After succeeding to Lessee's interest in the Premises, a Transferee that is not a Successor Lessee must use reasonable best efforts to find a Successor Lessee satisfying the criteria set forth above in this Article, but in any event no later than one (1) year following the date of termination provided in Lessor's default notice. If no Successor Lessee or Lessees are found in such one (1) year period to occupy at least 50% of the Demised Premises and improvements, then all of the Lessee's, Leasehold Mortgagee's and Transferee's interests in the Demised Premises, the improvements, and this Lease Agreement shall terminate in their entirety, without any right of recovery or compensation from the Lessor.

ARTICLE 5. DEFAULT BY LESSEE AND TERMINATION

The Lessor shall have the right, upon thirty (30) Days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following;

5.1 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein shall constitute a default, and the Lessor may, at its option, following 30 Days failure to comply, terminate this Agreement.

5.2 Insurance Defaults: Failure of the Lessee to obtain and provide evidence that all insurance requirements as stated in Article 10 Sub-Article 10.2 have been met, shall constitute a default, and the Lessor may, at its option, following 30 Days failure to comply, terminate this Agreement.

5.3 Other Defaults: Failure of the Lessee to meet or comply with the obligations listed in Article 5.3(a) and 5.3(b) to the satisfaction of the County, shall constitute a default and the Lessor may, at its option, following 30 Days failure to comply, terminate this Agreement.

- (a) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.
- (b) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein by the Lessee.

5.4 Immediate Termination: The happening of the following events shall constitute a default by the Lessee and this Agreement shall permit Lessor to terminate this lease immediately, effective as of the date of Lessee's receipt of notice thereof: abandonment of the Demised Premises or discontinuance of operations; failure of the Lessee for fifteen (15) days or more to occupy the Demised Premises for one or more of the purposes permitted under this Agreement; or if a lien is filed against the leasehold interest of the Lessee and not removed within a reasonable time.

5.5 Actions at Termination:

- (a) The Lessee shall vacate, quit, surrender up and deliver the Site to the Lessor on or before the termination date of this Agreement, whether by lapse of time or otherwise. If title of the Site is in the name of the Lessee at the time of Termination, and if directed by the Lessor, the Lessee shall demolish all Work on the Site and remove all debris at its costs. Lessee shall conduct any required demolition in accordance with the code and regulatory requirements in effect at the time. If not directed to demolish the Work done on the Site, the Lessee shall surrender the Site in the condition required under Article 7.4 (Lessee Repairs and Maintenance) herein with all repairs for which the Lessee is responsible shall be completed prior to surrender and shall execute appropriate documents confirming that title to such Work in Lessee's name has been transferred to Lessor. In no event shall Lessor be required to pay any compensation or reimbursement to Lessee for such transfer of title. On or before the termination date of this Agreement, the Lessee shall remove all of its personal property from the Site; provided, however, that if immediate termination occurs under Article 5.4, Lessee shall be allowed up to five (5) Days from the receipt of notice of termination to remove such personal property.
- (b) If the Lessor advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Site or into the ground under the Site, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever

environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions of such consultant regarding environmental clean-up efforts that may be required, and shall comply with any other clean-up requirements imposed on the Lessee by Federal, State or County laws, regulations or codes.

- (c) In the event of termination for default, the Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Agreement, the following amounts as damages: (1) the reasonable costs of re-entry and re-leasing including without limitation the cost of any clean up, alteration, repair, maintenance, refurbishment, removal of personal property and fixtures of the Lessee, or any other expense occasioned by failure of the Lessee to quit the Site upon termination and to leave them in the required condition, any remodeling costs, attorney's fees, court costs, and expenses of litigation through all levels of legal proceedings; and (2) the loss of reasonable rental value from the date of default until a new tenant has been secured.

5.6 Lien Upon Personal Property: In the event of termination for default, the Lessor shall have a lien upon all personal property of the Lessee located at the Site to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

5.7 Right to Show Premises: At any time within six (6) months of the scheduled expiration date of this Agreement or any time after the Lessee has been given notice of termination or default, pursuant to Article 5 (Default by Lessee and Termination), the Lessor shall have the right to enter on the Site for the purposes of showing the Site to prospective tenants or users during regular business hours.

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5.8 Other Terminations: This Agreement shall be subject to termination by the Lessor or the Lessee in the event of any one or more of the following:

- (A) The permanent abandonment of the Site.
- (B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Site, or any substantial part of parts thereof, in such a manner as to substantially restrict the Lessee from operating there from for a period in excess of ninety (90) consecutive days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States for just compensation in the event of any such assumption.
- (C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Site, and the remaining in force of such injunction for a period in excess of ninety (90) days. In the event of termination for such reason, Lessee's exclusive remedy shall be termination or reinstatement of this Lease Agreement by the County, at its sole discretion, for a period of time equal to the number of days that the injunction was in effect in excess of said ninety (90) days.

5.9 Termination of Lease Agreement for Certain Destruction Occurring During Last Five Years of Lease Term: Notwithstanding anything to the contrary contained herein, in the event that the improvements on the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the last five (5) years of the term of this Lease Agreement or the last five (5) years of any renewal term and the estimated cost for repair and restoration exceeds an amount equal to twenty-five percent (25%) of the then-current fair market value of the Food Service Operation, then Lessee shall have the right to terminate this Lease and its obligations hereunder by giving

written notice to Landlord within six (6) months after such damage or destruction. In such event, this Lease Agreement shall terminate fifteen (15) Days following Landlord's receipt of notice of casualty. The obligations of Lessee to pay rent under this Lease Agreement shall be prorated to the date of termination. In such event, the property insurance proceeds for the damaged buildings and business interruption insurance proceeds shall be paid to Landlord and Leasehold Mortgagee as their respective interests may appear.

5.10 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by the Lessee, on five (5) occasions regardless of whether the Lessee has cured each individual condition of breach or default as provided for in Sub-Article 5.1 (Payment Default), Sub-Article 5.2 (Insurance Defaults), and Sub-Article 5.3 (Other Defaults) above, the Lessee shall be determined by the County to be a "habitual violator". At the time that such determination is made by the County shall issue to the Lessee a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon the seventh (7th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt of said termination, the Lessee shall discontinue its operations at the Site and proceed to remove all its personal property in accordance with Sub-Article 5.5 (Actions at Termination) hereof.

5.11 Termination by Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of Site or voluntary discontinuance of operations at the Food Service Operation for any period of time exceeding fifteen (15) consecutive Days, unless such abandonment or discontinuance has been caused by casualty or governmental order that prevent the lessee's use of the Site for the purposes authorized in Article 1 Sub-Article 1.2 (Use of Premises) hereof.

5.12 Estoppel Certificates from Landlord: Upon request of Lessee or any Leasehold Mortgagee, Landlord agrees to give such requesting party an Estoppel certificate.

ARTICLE 6. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Lessee's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Lessee will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Lessee agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

6.1 Landlord's Right to Verify and Audit Information Submitted: Landlord may, during normal business hours and upon ten (10) days written notice to Lessee, inspect, take extracts from and make copies of Lessee's books and

records pertaining to the Demised Premises for the purpose of verifying any statement submitted to Landlord as required by this Lease Agreement. Landlord may, at its option and at its sole expense, conduct or cause to be conducted an audit to verify the Gross Revenue received by Lessee from the operation of the Demised Premises for any Lease Year or to verify any payments or rents under this Lease Agreement. If Landlord's audit shall disclose that an amount is due to Landlord in excess of the amount Lessee had previously or should have paid to Landlord for such Lease Year, then such amount, together with any late charge required by Article 3.6, shall be paid by Lessee within ten (10) days after receipt by Lessee of a written notice from Landlord setting forth the amount due and the calculations used in making the determination. If the amount due Landlord under the preceding sentence (excluding any late charge) exceeds the amount Lessee had previously or should have paid to Landlord for such Lease Year by five percent (5%) or more, the cost of such audit shall be at Lessee's expense. If Landlord's audit shall disclose that Landlord has been overpaid for such Lease Year, Landlord shall credit such overpayment to the next payment or payments required to be paid by Lessee under the terms of this Lease Agreement. Lessee's books and **records regarding the Demised Premises shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in writing.**

ARTICLE 7. DEVELOPMENT OF LAND AND CONSTRUCTION OF BUILDINGS

7.1 Connection Rights: Landlord hereby grants to Lessee, commencing with the Board's approval of this Lease Agreement, and continuing during and throughout the Term, the non-exclusive right, at the Lessee's expense, to construct utility infrastructure and connections and to tie-into existing infrastructure and utility connections serving the Property, all as to be specified in the Construction Plans. However, any connections to existing infrastructure and/or utilities must also receive the prior written approval of the owner of, or governmental entity having authority over, such infrastructure and/or utility.

7.2 Repair and Relocation of Utilities: Upon completion of construction of the Project, Landlord and Lessee hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Demised Premises required for the operation of the Demised Premises or of the Site, provided:

- (a) Such activity does not materially or adversely interfere with the other party's operations;
- (b) All costs of such activities are promptly paid by the party causing such activity to be undertaken;
- (c) Each of the utility facilities and the Demised Premises are thereafter restored to their former state; and
- (d) Each party complies with the provisions of all Permits and licenses which have been issued and are affected by such repair and relocation.

Landlord agrees to cooperate with Lessee in relocating existing utility lines and facilities on the Demised Premises which need to be relocated to develop or improve the Project, including reasonable use of existing easements benefiting the Land and adjoining rights of way to the Land. Such relocation of existing utilities shall be at the sole expense of the Lessee.

Additionally, the County shall have the right to require the implementation of safety measures if it determines in its sole discretion, that, as a result of activities undertaken by or on behalf of the Lessee or authorized by the Lessee, such safety measures are necessary to safeguard County property, facilities, operations, employees, patrons and/or the general public and Lessee shall pay all costs incurred in the implementation of such safety measures.

For example, if cranes are used during construction and the County determines that the operation of the cranes may cause damage to County facilities or endanger employees and/or patrons, it may require the use of "spotters" to coordinate crane activities and Lessee shall pay all costs incurred by the County in providing "spotters".

The County will notify the Lessee of all such costs incurred and provide an accounting of those costs. Lessee shall pay all such costs within thirty (30) Days of notification by County. Such payments shall be subject to the provisions of Article 3.6, Late Payments.

7.3 Damages and/or Service Interruptions: If, at any time, activities undertaken by or on behalf of the Lessee or authorized by the Lessee, cause any damage to County property or facilities or cause disruption or interruption to normal County operations, the Lessee agrees to pay all costs incurred by the County to repair such damage and to mitigate such impacts to operations, including providing replacement and/or alternative services as a result of such service disruptions or interruptions.

7.4 Signage and Landscaping of Entrances: Landlord agrees to cooperate with Lessee in the development of plans regarding entrances to the Demised Premises in order to achieve an aesthetic blend of landscaping and signage. All costs of developing such plans shall be paid by Lessee, and all signs must be compliant with Article 7 of the Miami-Dade County Home Rule Amendment and Charter.

- (a) Landlord's Signs Upon Demised Premises
System-wide informational graphics shall be allowed to be placed within the Demised Premises at the sole expense of Landlord and at locations and in sizes mutually agreed upon by Landlord and Lessee.
- (b) Lessees' Signs at the Site
Lessee shall be permitted to place directional signs within the Site at the sole expense of Lessee and at locations and in sizes mutually agreed to by Landlord and Lessee.

7.5 Lessee Repairs and Maintenance: Throughout the term of this Lease Agreement, Lessee, at its sole cost and expense, shall keep the Demised Premises in good order and condition, and make all necessary repairs thereto. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by Lessee. All repairs made by Lessee shall be at least substantially similar in quality and class to the original Work, ordinary wear and tear and loss by fire or other casualty excepted. Lessee shall keep and maintain all portions of the Demised Premises (and any other improvement constructed thereon) and all connections created by Lessee in a clean and orderly condition, providing such services as pest control, janitorial services, and grounds maintenance, as well as any other facet of site management required to maintain pristine condition of the Site and surrounding areas. Additionally, the Site shall be reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Landlord, at its option, and after thirty (30) Days written notice to Lessee, may perform any maintenance or repairs required of Lessee hereunder which have not been performed by Lessee following the notice described above, and may seek reasonable cost and expenses thereof from Lessee.

- (a) Repairs Affecting Demised Premises

Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, required by any damage to or destruction of the Demised Premises which adversely affects the Site, any such repairs and rebuilding shall be completed free and clear of liens, except to the extent they are subject to Leasehold Mortgages.

ARTICLE 8. PAYMENT OF TAXES, ASSESSMENTS

8.1 Lessee's Obligations for Impositions: Lessee shall pay or cause to be paid, prior to their becoming delinquent,

all Impositions, which at any time during the term of this Lease Agreement have been, or which may become a lien on, the Demised Premises or any part thereof, or any appurtenance thereto, provided, however, that;

- (a) If, by law, any Imposition (for which Lessee is liable hereunder) may, at the option of Landlord or Lessee be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same, including any accrued interest on the unpaid balance of such Imposition, in installments and, in such event, shall pay such installments as may become due during the term of this Lease Agreement (and provided further, that those installments which are to become due and payable after the expiration of the term of this Lease Agreement, but relating to a fiscal period fully included in the term of this Lease Agreement, shall be paid in full by Lessee);
- (b) Any Imposition for which Lessee is liable hereunder relating to a fiscal period, a part of which period is included within the term of this Lease Agreement and a part of which is included in a period of time after the expiration of the term of this Lease Agreement, shall be adjusted between Landlord and Lessee as of the expiration of the term of this Lease Agreement so that Lessee shall pay only that portion of such Imposition which is applicable to the period of time prior to expiration of the term of this Lease Agreement, and Landlord, if so obligated, shall pay the remainder thereof;
- (c) Any Imposition relating to the period prior to the Lease Effective Date shall be the sole responsibility and obligation of Landlord.

8.2 Contesting Impositions:

- (a) Lessee shall have the right to contest the amount or validity, in whole or in part, of any Imposition, for which Lessee is or is claimed to be liable, by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition, unless such payment or payment thereof under protest would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of this Article, Lessee may postpone or defer payment of such Imposition if:
 - (i) Neither the Demised Premises nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost; and
 - (ii) Upon the termination of any such proceedings, Lessee shall pay the amount of such Imposition or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith.
- (b) Landlord shall not be required to join in any proceedings referred to in this Article unless the provisions of any law, rule or regulation at the time in effect shall require that Landlord is a necessary party to such proceedings, in which event Landlord shall participate in such proceedings at Lessee's cost.

ARTICLE 9. SURRENDER

9.1 Surrender of Demised Premises: Lessee, on the last day of the term as extended by the renewal periods hereof, or upon any earlier termination of this Lease Agreement, shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Article 9 herein, in good condition and repair, reasonable wear and tear, acts of nature, and casualties excepted.

9.2 Ownership of Improvements: All buildings and all material and equipment provided by Lessee or on its behalf which are incorporated into or become a part of the Project shall, upon being added thereto or incorporated therein, and the Project itself, be and remain the property of Landlord, unless otherwise specifically excepted in this Lease Agreement, but subject to the same (not including personal property of Lessee) becoming the property of Landlord at the expiration or termination of this Lease Agreement, as extended by renewal terms, if applicable.

9.3 Removal of Personal Property or Fixtures: Where furnished by or at the expense of Lessee, or secured by a lien held by either the owner or a lender financing same, signs, furniture, furnishings, movable trade fixtures, business equipment and alterations and/or other similar items may be removed by Lessee, or, if approved by Lessee, by such lien holder at, or prior to, the termination or expiration of this Lease Agreement; provided however, that if the removal thereof will damage a Building or necessitate changes in or repairs to a Building, Lessee shall repair or restore (or cause to be repaired or restored) the Building to a condition substantially similar to its condition immediately preceding the removal of such furniture, furnishings, movable trade fixtures and business equipment, or pay or cause to be paid to Landlord the reasonable cost of repairing any damage arising from such removal.

9.4 Rights to Personal Property after Termination or Surrender: Any personal property of Lessee which shall remain in the Demised Premises after the fifteenth (15th) day following the termination or expiration of this Lease Agreement and the removal of Lessee from the Food Service Operation, may, at the option of Landlord, be deemed to have been abandoned by Lessee and, unless any interest therein is claimed by a Leasehold Mortgagee, said personal property may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit.

9.5 Survival: The provisions of this Article 9 shall survive any termination or expiration of this Lease Agreement.

ARTICLE 10. INSURANCE AND INDEMNIFICATION

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

10.2 Insurance: The Lessee shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

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

B. Commercial General Liability Insurance in an amount not less than \$5,000,000 per occurrence, \$10,000,000 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.**

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

Commented [E](3): Need new risk determination

Management and Operation

In addition to the insurance required above, the following insurance coverage will be required from the Lessee *(and/or any sub-contractor providing amenities and/or service in relation to this Lease Agreement)* throughout the course of the management and operational phase of the Agreement and shall require all sub-contractor's 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 to, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- a) Property Coverage on an "All Risk" basis to include Business Interruption in an amount sufficient to continue business operations and Windstorm, in an amount not less than one hundred (100%) percent of the replacement cost of all real property.
- b) 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.
- c) Commercial General Liability Insurance in an amount not less than \$5,000,000 per occurrence, \$10,000,000 in the aggregate on a per project basis not to exclude Products and Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
 - *Sub-contractor is in the business of serving and/or selling alcohol Liquor Liability in an amount not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate is required.*
- d) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work, in an amount not less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.
- e) Workers' Compensation Insurance as required by Chapter 440, Florida Statutes.
- f) Crime Insurance including but not limited to theft or fraud, employee dishonesty and third party claims, in an amount not less than \$500,000 per claim.

Commented [E](4): Need new risk determination

- * *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

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requirements throughout the duration of this Lease 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**

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) days.

If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Lessee shall have an additional five (5) days to submit a corrected certificate to the County. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) days, the Lessee shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Lessee shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Lessee shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) Days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) Days, the County may, at its sole discretion, terminate the Contract for cause and the Lessee shall be responsible for all direct and indirect costs associated with such termination.

10.3 Loss Payees of Lessee-Maintained Property Insurance:

The following provisions shall apply to all policies of property insurance required to be maintained by Lessee;

The loss thereunder shall be payable to Lessee, Landlord and to any Leasehold Mortgagee under a standard mortgage endorsement. Neither Landlord nor any Mortgagee shall unreasonably withhold its consent to a release

of the proceeds of any fire or other casualty insurance for any loss which shall occur during the term of this Lease Agreement for repair or rebuilding. Any proceeds remaining after completion of rebuilding or repair as defined in this Agreement, shall be paid to Lessee, and in the event any Rent was abated during the period of rebuilding or repair, such excess insurance proceeds shall be considered Gross Revenue as defined in Article 2, but only to the extent such Rent was abated. If all the insurance proceeds are in fact made available to Lessee and such insurance proceeds received by Lessee or Leasehold Mortgagee are insufficient to pay the entire cost of the Work, Lessee shall supply the amount of such deficiency, which in the year of payment or in the year immediately prior or following the payment, shall act to reduce Gross Revenue by a like amount.

ARTICLE 11. DAMAGE AND DESTRUCTION

11.1 Lessee's Duty to Restore: If, at any time during the term of this Lease Agreement, the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Lessee, at its sole cost and expense, if so requested by Landlord or elected by Lessee, and provided that the insurance proceeds related to such casualty are made available to Lessee for use in connection therewith, shall repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Lessee may elect to make in conformity with the provisions of this Lease Agreement and modern construction techniques and methods.

11.2 Landlord's Duty to Repair and Rebuild the Site: If, at any time during the term of this Lease, the Site (or any part thereof) shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Landlord, at its sole cost and expense, if requested by Tenant, shall repair or rebuild the Site of a design, size and capacity as is required by Landlord's needs at the time of such repair or rebuilding.

ARTICLE 12. OPERATION OF SITE

12.1 Control of Demised Premises: Landlord hereby agrees that, subject to any express limitations imposed by the terms of this Lease Agreement, Lessee shall be free to perform and exercise its rights under this Lease Agreement and shall have exclusive control and authority to direct, operate, lease and manage the Demised Premises. Lessee covenants and agrees to use reasonable efforts to continuously operate the Demised Premises consistent with prudent business practices in order for the Gross Revenue generated by the Demised Premises to be reasonably comparable to that generated in similar facilities in Miami-Dade County which are subject to similar uses and restrictions.

12.2 Non-Interference: Landlord and Lessee hereby mutually agree not to interfere with the free flow of pedestrian or vehicular traffic to and from the public areas and to and from the Site. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind shall be placed, kept, permitted or maintained in such fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from the Site. The foregoing shall not prohibit Lessee from closing the Site and denying access to the public at such times and in such manner as deemed necessary by Lessee during the development or construction of any portion of the Site, the repair and maintenance of the Demised Premises or during the operation of the Demised Premises.

ARTICLE 13. COMPLIANCE WITH LAWS AND ORDINANCES

13.1 Compliance by Lessee: Throughout the term of this Lease Agreement, Lessee, at Lessee's sole cost and expense, shall promptly comply with all applicable Laws and Ordinances. To the extent that Lessee's compliance shall require the cooperation and participation of Landlord, Landlord agrees to use its best efforts to cooperate and participate.

13.2 Contest by Lessee: Lessee shall have the right, after prior written notice to Landlord, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Lessee without cost or expense to Landlord, except as may be required in Landlord's capacity as a party adverse to Lessee in such contest. If counsel is required, the same shall be selected and paid by Lessee. Landlord hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for Lessee to confirm or acquire status to contest the validity or application of any Law or Ordinance, which instrument shall be subject to the reasonable approval of counsel for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

ARTICLE 14. DISCHARGE OF OBLIGATIONS

14.1 Lessee's Duty: During the term of this Lease Agreement, except for Leasehold Mortgages or as otherwise allowed under this Lease Agreement, Lessee will discharge any and all obligations incurred by Lessee which give rise to any liens on the Demised Premises, it being understood and agreed that Lessee shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefore or the amount thereof, provided (a) such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, or disputed payments are escrowed while the parties negotiate the dispute, and (b) such action does not subject Landlord to any expense or liability. In the event Lessee withholds any payment as described herein, it shall give written notice to Landlord of such action and the basis therefore.

14.2 Landlord's Duty: During the term of this Lease Agreement, Landlord will discharge any and all obligations incurred by Landlord which give rise to any liens on the Demised Premises, it being understood and agreed that Landlord shall have the right to withhold any payment so long as it is in good faith disputing liability therefore or the amount thereof, provided such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, and such action does not subject Lessee to any expense or liability.

ARTICLE 15. ENTRY ON PREMISES BY LANDLORD

15.1 Inspection by Landlord of Demised Premises: Landlord and its authorized representatives, upon reasonable notice and in the presence of a representative of Lessee, shall have the right to enter the Demised Premises at reasonable times during normal business hours for the purpose of inspecting the same to insure itself of compliance with the provisions of this Lease Agreement.

15.2 Limitations on Inspection: Landlord, in its exercise of the right of entry granted to it in Article 15.1, shall (a) not unreasonably disturb the occupancy of Lessee, nor disturb their business activities; and (b) and shall comply with all laws, rules and regulations governing or applicable to the Landlord.

ARTICLE 16. LIMITATION OF LIABILITY

16.1 Limitation of Liability of Landlord: Landlord shall not be liable to Lessee for any incidental or consequential loss or damage whatsoever arising from the rights of Landlord hereunder.

16.2 Limitation of Liability of Lessee: Lessee shall not be liable to Landlord for any incidental or consequential loss or damage whatsoever arising from rights of Lessee hereunder.

16.3 Limited Waiver of Landlord Lien: In order to enable Lessee to secure financing for the purchase of fixtures, equipment, and other personalty to be located on or in the Demised Premises, whether by security agreement and financing statement, mortgage or other form of security instrument, Landlord does waive and will from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory or common law liens securing payment of rent or performance of Lessee's other covenants under this Lease Agreement as to such fixtures, equipment or other personalty.

16.4 No Subordination or Mortgaging of Landlord's Fee Title: There shall be no subordination of Landlord's fee simple interest in the Land to the lien of any Leasehold Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Leasehold Mortgagee may impose any lien upon the Landlord's fee simple interest in the Land.

16.5 Transfer of Interest by Landlord: If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Demised Premises or if there is any sale or transfer of Landlord's interest in the Demised Premises, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of Landlord's interest in the Demised Premises assumes in writing all such agreements, covenants and obligations of Landlord. Nothing herein shall be construed to relieve Landlord from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Landlord's interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Article 17 below.

ARTICLE 17. CERTIFICATES BY LANDLORD AND LESSEE

17.1 Lessee Certificates: Lessee agrees at any time and from time to time, upon not less than twenty (20) Days prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing setting forth the rents, payments and other monies then payable under the Lease Agreement, if then known; certifying that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that the Lease Agreement is in full force and effect as modified and stating the modification), and the dates to which the rents, payments and other monies have been paid, and stating (to the best of Lessee's knowledge) whether or not Landlord is in default in keeping, observing or performing any of the terms of this Lease Agreement; and, if in default, specifying each such default (limited to those defaults of which Lessee has knowledge). It is intended that any such statement delivered pursuant to this Article may be relied upon by Landlord or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Lessee shall have no actual knowledge.

17.2 Landlord Certificates: Landlord agrees at any time and from time to time, upon not less than twenty (20) Days prior written notice by Lessee or by a Leasehold Mortgagee, to furnish a statement in writing, setting forth the rents, payments and other monies then payable under the Lease Agreement, if then known; certifying that this Lease Agreement is unmodified and in full force and effect (or if there shall have been modifications that the Lease

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Agreement is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Lessee is in default in keeping, observing and performing any of the terms of this Lease Agreement, and, if Lessee shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or purchaser of Lessee's interest in this Lease Agreement, or any Leasehold Mortgagee or any assignee thereof, but reliance on such certificate may not extend to any default of Lessee as to which Landlord shall have had no actual knowledge.

ARTICLE 18. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Parks, Recreation and Open Spaces, Performance Excellence Division
Attention:
Phone:
E-mail:

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

Attention:
Phone:
E-mail:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 19. SEVERABILITY

If any provisions of this Lease Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Lease Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

ARTICLE 20. OTHER PROVISIONS

20.1 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, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. 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, default or non-performance hereof by the other party.

20.2 Relationship of Parties: This Lease Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between Landlord and Lessee, the sole relationship between Landlord and Lessee being that of Landlord and Lessee or lessor and lessee.

20.3 Consents: Whenever in this Lease Agreement the consent or approval of Landlord or Lessee is required, such consent or approval shall be made by the County Mayor or County Mayor's designee on behalf of Landlord and;

- (a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the party requesting same;
- (b) shall not be effective unless it is in writing; and
- (c) shall apply only to the specific act or transaction so approved or consented to and shall not relieve Lessee or Landlord, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

20.4 Entire Agreement: This Lease Agreement contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

20.5 Holidays: It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease Agreement, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next following business day.

20.6 Brokers: Landlord and Lessee 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 Lease Agreement.

20.7 Dangerous Liquids and Materials: Lessee shall not knowingly permit its subtenants or other person or entity in contractual privity with Lessee to carry flammable or combustible liquids into or onto the Demised Premises during or following completion of construction except as such substances are used in the ordinary course of business, and shall prohibit the storage or manufacture of any flammable or combustible liquid or dangerous or explosive materials in or on the Demised Premises; provided that this restriction shall not apply to prevent the following:

- (a) the entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion,
- (b) the use of normal cleaning and maintenance liquids and substances, or
- (c) their use in construction of Site and improvements on the Demised Premises.
- (d) their use in connection with operations at the Site.

20.8 Radon:

In accordance with Florida law, the following disclosure is hereby made:

Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed 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 a county public health unit.

20.9 Sustainable Buildings Program: In accordance with Miami-Dade County Ordinance 07-65, The Sustainable Buildings Program, sustainable development building measures shall be incorporated into the design, construction, renovation and maintenance of County facilities. Therefore, the Proposer shall incorporate sustainable development building measures into the design, construction, operations, and maintenance of the proposed Food Service Operation. 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 proposed Food Service Operation. Lessee shall seek and obtain a minimum of LEED Silver certification on built Food Service Operation and provide all backup documentation to confirm compliance with this requirement. The Lessee is responsible for ensuring compliance with this County Ordinance. Lessee shall also be required to assist the County with obtaining 179D Commercial Building Tax Deduction upon completion of development, if applicable.

20.10 Energy Efficiency Rating Disclosure

In accordance with Florida law, the following disclosure is hereby made:

Lessee may have the Property's energy efficiency rating determined. Lessee acknowledges that it has received from Landlord a copy of The Florida Building Energy-Efficiency Rating System Brochure as provided by the State of Florida Department of Community Affairs.

20.11 Governing Law: This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

20.12 Counterparts: This Lease Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

20.13 Additional Work: Landlord and Lessee hereby acknowledge, that if both parties hereto agree, that the Landlord may contract for certain Work to be provided by Lessee, including but not limited to, construction and maintenance items. Such agreements shall be approved by both parties in writing and such Work shall be at the cost of the Landlord and, if the parties hereto agree, may be paid in the form of rent credit.

20.14 Force Majeure: The terms and conditions of this Agreement (with the exception of the obligation of the Lessee to pay the amounts required by terms of this Agreement) shall be subject to force majeure. Neither the County nor the Lessee shall be considered in default in the performance of its obligations hereunder, if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, fire, wind, flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof beyond the reasonable control of the party affected, provided that notice of such force majeure is given by the affected party, to the other within ten days of the beginning of said force majeure. Should one or both of the parties be prevented from fulfilling its contractual obligations by a state of force majeure lasting continuously for a period of six months, the parties shall consult with each other regarding the future

implementation of this Agreement.

ARTICLE 21. OTHER PROGRAMS

Contracts (Implementing Order #3-24): Lessee 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. Lessee 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, and any other program of the County made applicable to the Lessee's activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time, Lessee agrees to comply with such applicable provisions as well as any Implementing Orders and other directives issued by the County relating to such Programs.

ARTICLE 22. VENDOR REGISTRATION AND FORMS

22.1 Registration: The Lessee shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, 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 Lessee'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 Lessee confirms its knowledge of and commitment to comply with the following:

- | | |
|---|---|
| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> | <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County)</p> |
| <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2-8.1(d)(2) of the Code of Miami-Dade County)</p> | <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> |
| <p>3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> | <p>7. Miami-Dade County Code of Business Ethics Affidavit
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)</p> |
| <p>4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County)</p> | <p>8. Miami-Dade County Family Leave Affidavit</p> |

(Article V of Chapter 11 of the Code of Miami-Dade County)

(Resolution No. R-919-18)

9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit**
(Section 448.095, of the Florida State Statutes)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution No. R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**

14. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
15. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
16. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

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.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

23.1 Landlord's Representations and Warranties:

Landlord hereby represents and warrants to Lessee that:

- (a) It has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Landlord have the authority to bind Landlord and to enter into this transaction and Landlord has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.
- (b) Landlord will deliver possession of the Land to Lessee free and clear of any and all tenancies and occupancies of every nature whatsoever, whether by Miami-Dade County or otherwise, and also free and clear of any violations by Miami-Dade County of Laws and Ordinances, except as may be agreed by Lessee in writing, and subject only to the rights reserved herein to Landlord.
- (c) Throughout the term of this Lease the parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Lease.

23.2 Lessee's Representations and Warranties: Lessee hereby represents and warrants to Landlord that it has full power and authority to enter into this Lease Agreement and perform in accordance

with its terms and provisions and that the parties signing this Lease Agreement on behalf of Lessee have the authority to bind Lessee and to enter into this transaction and Lessee has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease Agreement.

ARTICLE 24. ENVIRONMENTAL CONDITIONS

24.1 Notice of Discharge to County:

In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or clean-up of any hazardous material on or about the Demised Premises in connection with Lessee's operation thereon; or (ii) any written environmental claim affecting Lessee from any person or entity resulting from Lessee's use on or about the Demised Premises, then Lessee shall immediately notify Lessor orally within twenty-four (24) hours and in writing within three (3) days of said notice. If Lessor is reasonably satisfied that Lessee is not promptly commencing the response to either of such events, then County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such hazardous material or environmental claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any hazardous material or an environmental claim pertaining to the Demised Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Lease Agreement and shall be payable by Lessee upon demand.

With regard to any reporting obligation arising out of Lessee's operations or during the Lease Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Regulatory and Economic Resources, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

Within sixty (60) days of execution of this Lease Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of hazardous materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

24.2 Reports to County: For any year in which any hazardous materials have been used, generated, treated, stored, transported or otherwise been present on or about the Demised Premises, (for purposes related to Lessee's operations on the Demised Premises), Lessee shall provide County with a written report listing: the hazardous materials which were present on about the Demised Premises; all releases of hazardous material that occurred or were discovered on or about the Demised Premises and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such hazardous materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during

that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on or about the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year for the preceding calendar year.

24.3 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on or about the Demised Premises with all applicable environmental laws, which system shall include, no less than once each year a detailed review of such compliance by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the County approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such environmental audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual environmental audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits". If the environmental audit indicates any unresolved violation of any applicable environmental law and/or environmental requirements, Lessee shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) days of the County's request.

24.4 Remediation of Hazardous Material Releases: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any hazardous Materials to be released, discharged, or otherwise located on or about the Demised Premises during the term of this Lease Agreement, Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion on or about the Demised Premises and any other affected soil or groundwater to their condition existing prior to the hazardous material release in a manner not inconsistent with applicable environmental law. County shall approve all remedial work.

County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to baseline environmental conditions.

24.5 Existing Environmental Conditions: Lessee, by executing this Lease Agreement, represents it has visited the Site, is familiar with local conditions under which the construction and development is to be performed, will perform all test borings and subsurface engineering generally required at the Site under sound and prudent engineering practices, and as reasonably requested by the Lessor, and will correlate the results of the test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Site. Lessee shall restore the Site to a condition substantially similar to its pre-testing condition after all testing,

and shall provide the Lessor with a copy of all test results. The Lessor makes no warranty as to soil and subsurface conditions. Lessee shall not be entitled to any adjustment of rental payments or of any applicable time frame or deadline under this Lease Agreement in the event of any abnormal subsurface conditions unless the subsurface conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods and the commencement of Guaranteed Annual Rent shall be extended by the reasonable time necessary to accommodate redesign and lengthened construction schedules resulting from that event.

Lessee agrees that the Demised Premises shall be leased and delivered to Lessee in its current "as-is" "where-is" condition and hereby, warrants, covenants, agrees, and acknowledges that:

- (A) Hazardous materials may be present on the grounds comprising the Project.
- (B) Lessee is provided the opportunity to conduct an independent investigation of the Demised Premises and the physical condition thereof, including the potential presence of any hazardous materials on or about the Demised Premises. Lessee's report on the investigation, if any such report is prepared, will be provided to the County. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Lease Agreement notwithstanding the environmental conditions of the Demised Premises or properties surrounding the Demised Premises, subject to Lessee's right to terminate this Lease Agreement as otherwise provided herein.
- (C) Because of the possible presence of environmental contaminants on or about the Demised Premises, County has made no express, implied, or other representations of any kind with respect to the suitability or usability on or about the Demised Premises, or any improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of hazardous materials in, on, under, or about the Demised Premises), for Lessee's proposed or intended use, and Lessee has relied solely on Lessee's own inspection and examination of such matters.
- (D) Except as to County's obligations set forth in this Lease Agreement, Lessee expressly assumes the risk that hazardous materials that are or may be present on or about the Demised Premises at the commencement of the Lease Agreement may affect the suitability or usability of the Demised Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's remediation obligations provided below, or any other discharge, disposal or release of hazardous materials or violation of environmental requirements, caused by County, its agents, employees or contractors, County shall have no responsibility or liability with respect to any hazardous materials on or about the Demised Premises. Notwithstanding the foregoing, in no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable pursuant to this Lease) resulting from the presence of hazardous materials on or about the Demised Premises at any time during the Lease Agreement.

24.6 Additional Responsibilities for Existing Hazardous Materials: Unless the parties agree otherwise in writing, the County shall conduct response actions mandated by existing environmental requirements applicable to the County for (i) hazardous materials disclosed by the Lessee and (ii) baseline environmental conditions, provided however that:

Lessee warrants that any hazardous material discovered during the initial construction period (as defined in this Lease Agreement) shall be presumed to be a baseline environmental condition under this Lease Agreement except to the extent that County demonstrates to the satisfaction of Lessee by written notice setting forth the explanation as to why the hazardous material originated from a discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision denoted below:

County and Lessee agree that any dispute between them relating to the detection of hazardous materials will first be submitted, by written notice, to a designated representative of both County and Lessee who will meet at County's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such hazardous material shall remain with the County.

County's responsibility for remediation under this Lease Agreement shall be limited to the recognized environmental conditions required to be remediated under applicable environmental requirements. If County is permitted to leave any hazardous material in place under applicable environmental requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of hazardous materials for Lessee to be able to continue with construction or occupancy of the Demised Premises. The County shall notify Lessee of any such decision to leave hazardous material in place.

24.7 Environmental Conditions Remediation/Mitigation Required for Demised Premises: If at any time after the Lease Effective Date, the Lessee causes a new environmental condition, the Lessee shall be responsible to undertake and complete any remediation and/or mitigation work that is required on the Demised Premises by applicable law, inclusive of any monitoring required thereafter, and to pay all remediation costs associated therewith. If at any time after the Lease Effective Date, the Lessee, with respect to an existing environmental condition, through negligence or willful misconduct, exacerbates or disturbs any existing environmental condition, then the Lessee shall be responsible to undertake and complete any remediation and/or mitigation work that is required on the Demised Premises by applicable law, inclusive of any monitoring required thereafter, and to pay all remediation costs associated therewith. This obligation shall survive the termination or expiration of this Lease Agreement and shall obligate the Lessee to complete all

required remediation activities including, but not limited to, all required testing, monitoring, and closure conditions.

24.8 Environmental Indemnities and Obligations: The Lessee agrees to indemnify, defend, and hold harmless the County from and against any claims arising from new environmental conditions on the Demised Premises caused by the Lessee, and/or its employees, agents, consultants, and/or contractors in performing its activities under this Lease Agreement. The Lessee agrees to indemnify, defend, and hold harmless the County from and against any claims arising from the exacerbation or disturbance of existing environmental conditions on the Demised Premises caused by the negligence or willful misconduct of the Lessee, and/or its employees, agents, consultants and/or contractors in performing its activities under this Lease Agreement. The indemnification provisions contained in this Article shall survive the termination or expiration of this Lease Agreement. This Lease Agreement shall not alter the Parties' rights and obligations with respect to environmental issues, including Chapter 24 of the Code of Miami-Dade County, with the exception of the environmental conditions matters agreed to herein. Nothing herein shall relieve the Lessee, and/or its employees, agents, consultants and/or contractors from the obligation to comply with Chapter 24 of the Code of Miami-Dade County and all other applicable environmental laws, including state and federal statutes and regulations.

ARTICLE 25. MUTUAL COVENANTS OF NON-INTERFERENCE

Lessee's development and construction of the Project and its use and operation of the Demised Premises shall not materially and or adversely interfere with Lessor's customary and reasonable operation of the Park, unless prior arrangements have been made in writing between Lessor and Lessee. Similarly, Lessor's use of the Park shall not materially and or adversely interfere with Lessee's development and construction of the Site and its use and operation of the Demised Premises and the buildings and improvements to be constructed thereon, unless prior arrangements have been made in writing between Lessor and Lessee. Lessor may at any time during the term of this Lease Agreement, stop or slow down construction by Lessee, but only upon Lessor's reasonable determination that the safety of the Park, or of the users of the Park or of any employees, agents, licensees and permittees of the County are jeopardized. Any such slowdown or stoppage shall be deemed to be an unavoidable delay and shall entitle Lessee to appropriate extensions of time hereunder (including, without limitation, time frames pertaining to Rent), provided that such safety hazard which caused the slowdown or stoppage is not the result of Lessee's negligence or willful act.

ARTICLE 26. SHANNON MELENDI ACT

The Contractor shall comply with Miami-Dade County Ordinance No. 08-07, Chapter 26, "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". The Contractor shall ensure that all management, staff, and volunteers:

- Have had nationwide criminal background checks conducted by a Professional Background Screener.

- Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry.
- Have been verified as being United States Citizens or having legal immigrant status employment.
- Complete an affidavit affirming that no work or volunteer duties will be performed on Park property owned or operated by Miami-Dade County in violation of this Ordinance and that an arrest will be reported to the Contractor within forty-eight (48) hours of such arrest.
- Wear picture identification at all times while on County property and when in direct contact with patrons and the general public.
- Retain all records demonstrating compliance with the background screening required herein for not less than three (3) years beyond the end of the contract term. The Contractor shall provide the County with access to these records annually, or at the request of the County.

ARTICLE 27. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

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

ARTICLE 27. DESIGNATION OF LANDLORD'S REPRESENTATIVE

The County Mayor, or designee, shall have the power, authority and right, on behalf of the Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the

Miami-Dade County, FL

Contract No.

County Commission, to:

- (a) review and approve documents, plans, applications, lease assignments and requests required or allowed by Lessee to be submitted to Landlord pursuant to this Article and this Lease Agreement;
- (b) consent to actions, events, and undertakings by Lessee for which consent is required by Landlord;
- (c) make appointments of individuals or entities required to be appointed or designated by Landlord in this Lease Agreement;
- (d) execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;
- (e) execute on behalf of Miami-Dade County any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures and secure permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Demised Premises; and
- (f) amend this Lease Agreement to correct any typographical or non-material errors.

ARTICLE 28. POLYSTYRENE BAN

Lessee shall comply with Ordinance 16-58 – Polystyrene Products Ban. Ordinance 16-58 amended Chapter 26 of the Code of Miami-Dade County which added Rule 36 that bans the sale or use of polystyrene (also known as Styrofoam) food-service articles in parks and park property. This ban applies to any contractor, vendor, lessee, licensee, programming partner, or permittee of the County that uses, works on, provides services at, or undertakes construction of park property; a special events permittee for an event in a park; or an operator or manager of park property or a facility within a park under many circumstances. A polystyrene article is defined as plates, bowls, cups, utensils, cutlery, tableware, containers, lids, trays, coolers, ice chests, bags, boxes, wrappings, bottles, and all similar articles that consist of polystyrene. This rule does not apply to polystyrene articles that are used for prepackaged food that have been filled and sealed prior to receipt by the Lessee. A violation of this rule shall be deemed a default under the terms of the applicable contract between the County and the Lessee.

[Signatures on Next Page]

Miami-Dade County, FL

Contract No.

IN WITNESS WHEREOF, Landlord has caused this Lease Agreement to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and Lessee has caused this Lease Agreement to be executed by its duly authorized representative all on the day and year first hereinabove written.

LANDLORD

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____

Name: _____

Title: _____

ATTEST:

HARVEY RUVIN, CLERK

By: _____

Miami-Dade County, FL

Contract No.

LESSEE

Signed in the presence of:

Print Name: _____

Print Name: _____

By: _____,
a Florida limited liability company,
its manager

By: _____

Name: _____

Title: _____

Notarizations begin on following page.

Approved as to form and legal sufficiency

Print Name: _____

Miami-Dade County, FL

Contract No.

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____.

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

- Print or Stamp Name:
 Notary Public, State of Florida at Large
 Commission No.:
 My Commission Expires:

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____.

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

- Print or Stamp Name:
 Notary Public, State of Florida at Large
 Commission No.:
 My Commission Expires: