RESOLUTION NO. 2023-32825

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE CONCESSION AGREEMENT WITH BOUCHER BROTHERS PIER PARK, LLC, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-479-KB FOR THE MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE CONCESSION AGREEMENT.

WHEREAS, on May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the Administration to prepare and issue Request for Proposals (RFP) 2023-479-KB for the management and operation of a high-end beach establishment at One Ocean Drive, also known as Pier Park, and the adjacent concession area (collectively, the "Concession Area"), with the new agreement taking effect after the expiration of the existing Penrod Lease and Penrod Concession Agreements, which end on May 6, 2026; and

WHEREAS, the RFP allowed bidders to submit proposals for up to two independent proposal alternates - Option 1 for an agreement having a term of less than 10 years and Option 2 for an agreement having a term of up to 30 years; and

WHEREAS, on August 31, 2023, the City received proposals from the following firms for Options 1 and 2:

Option 1
- Boucher Brothers Management, Inc.
- Tao Group Hospitality/ One Ocean Hospitality
- The Group US Management LLC

Option 2
- Boucher Brothers Management, Inc.
- RH
- Tao Group Hospitality/One Ocean Hospitality
- The Group US Management LLC; and

WHEREAS, on September 11, 2023, the Evaluation Committee appointed by the City Manager convened to consider the proposals received; and

WHEREAS, for Option 1, the proposal submitted by Boucher Brothers was the unanimously top-ranked proposal by the Evaluation Committee, and for Option 2, the Evaluation Committee process resulted in a tie between the proposals submitted by Boucher Brothers and The Group US Management; and

WHEREAS, after a thorough review of the facts of the procurement, the results of the evaluation committee process, the financial analysis of the 10-year option versus the 30-year option, and the best interests of the City with regard to the property, on September 27, 2023, the City Manager recommended that the Mayor and City Commission authorize the Administration to negotiate an agreement for Option 1 with Boucher Brothers, the unanimous top-ranked bidder for Option 1; and

WHEREAS, the full details and analysis of the RFP process are included in Attachment B to the Memorandum accompanying this Resolution; and

WHEREAS, on September 27, 2023, the Mayor and City Commission approved Resolution No. 2023-32783, accepting the recommendation of the City Manager with regard to

the proposals received in response to the RFP and authorizing the Administration to negotiate an agreement with Boucher Brothers based on its Option 1 proposal; and

WHEREAS, as directed by the Mayor and City Commission, the Administration and Boucher Brothers ("Concessionaire") have finalized negotiations on a concession agreement for the management and operation of a high-end beach club in the Concession Area; and

WHEREAS, the negotiated Concession Agreement for the Management and Operation of a High-End Beach Establishment is attached as Attachment A to the Commission Memorandum accompanying this Resolution (the "Concession Agreement"); and

WHEREAS, the material terms of the agreement are as follows:

1. **Important Dates**

- *Effective Date* means the date that the agreement is fully executed by all parties, typically ten (10) days after contract approval.
- *Occupancy Date* means the date upon which the Concessionaire is permitted to occupy and use the Concession Area, which is anticipated to be May 7, 2026.
- *Commencement Date* means August 1, 2027, subject to extension due to Unavoidable Delays (as defined in the Concession Agreement agreement), or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first.

2. **Concession Area**

The Concession Area is depicted in Attachment D to the Commission Memorandum accompanying this Resolution and generally includes all areas in the existing Penrod Lease and Penrod Concession Agreements (i.e., the building and adjacent outdoor areas, the beach concession area) as well as the parking lot. As to the parking lot, the City will retain 72 parking spaces for municipal uses.

3. **Uses**

The Concessionaire is authorized to conduct the following kinds of businesses and provide the following kinds of services in the Concession Area.

- **Rental of Beach and Pool Equipment**. In connection with the Beachfront Operations and the Pool Operations, Concessionaire shall be permitted to rent Beach and Pool Equipment including, but not be limited to, beach beds, beach chairs (including lounge chairs), pads, umbrellas, cabanas, sun canopies, flotation devices and such other related equipment as approved by the City Manager or his/her designee pursuant to this Agreement.

- **Restaurant Operations and Café Operations**. The Concessionaire shall enter into a subcontract with Major Food Group with respect to the Restaurant Operations and Café Operations at the Concession Area. The Restaurant Operations shall consist of the construction and operation of three (3) distinct dining concepts at the Concession Area, with the initial concepts being a daytime casual dining concept on the first floor of the building on the Concession Area, another being an evening upscale dining concept on the second floor of the building on the Concession Area, and the third being an outdoor upscale café concept (the "Outdoor Café"). The proposed final dining concepts, or any change in the future, shall

be submitted to the City by or before April 1, 2024, for the prior written approval of the City Manager or his or her designee.

- **Kids Club**. Concessionaire shall enter into a subcontract with Nannywisdom, LLC, d/b/a itavi®, with respect to the Kids Club operations at the Concession Area. The Kids Club Operations shall be a high-end quality children's center operated in accordance with the itavi® Method and will provide free childcare services, subject to availability, for the children or legal wards of patrons of the restaurants, health and wellness center and/or retail pavilion while patrons are physically present on-site. The Kids Club shall be a dedicated, secure, indoor location inside the building on the Concession Area and will include a secure, private bathroom for children from the approximate ages of 4 to 12 years of age and furnished with age-appropriate furniture.

- **Health and Wellness Center**. The Concessionaire shall have the right to operate or subcontract for the operation of the wellness operations, which shall consist of a high-end quality health and wellness facility.

- **Sale of Beach-Related Sundries and Skin Care Products by Concessionaire**. Concessionaire shall have the right to sell beach-related sundries and skin care products (such as lotions, oils, and other skin care products) in the beachfront area and pool area.

- **Retail Pavilion**. Concessionaire shall have the right to operate the retail pavilion consisting of, among other things, a collection of retail shops which may include, but not be limited to, art galleries comprised of unique, emerging local talent side by side with established artists, artisanal food shops, fashion and design shops and floral shops.

- **Prohibited Uses**. Concessionaire shall not use the Concession Area for any of the following purposes: (a) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Concession Area, and then only for thirty (30) days after the date of any such damage; (b) as an auction or flea market; (c) any business in which Concessionaire is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (d) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (e) coinbox entertainment (pinball, video games, moving pictures operated by coins); (f) casino gambling or games of change or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (g) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or for any purpose or in any way in violation of Concessionaire's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (h) movie theatre; (i) medical facilities and offices; (j) check cashing facilities; (k) pawn shops; (l) the sale of firearms; (m) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (m) places of worship; (n) political offices; (o) military recruiting; (p) consular, legation or any other offices of foreign governments; (q) tire sales; (r) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (s) offices for the practice of veterinary medicine; (t) the sale of major appliances as a primary business; (u) housing or sleeping quarters; (v) grocery stores (other than specialty gourmet shops); (w) second hand stores; and/or (x) in any manner that will violate any Certificate of Occupancy or Certificate of Use

for the Concession Area or any portion thereof, or which will violate any Requirements applicable to the Concession Area.

4. Term

The term of the agreement with Boucher Brothers is nine (9) years and 364 days, commencing on August 1, 2027, subject to any Unavoidable Delays, or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first. While the Concession Agreement becomes effective upon execution, the term is scheduled to begin after the renovations, which are expected to take 13 months, have been completed. Boucher Brothers may begin the design process, permitting, and the required regulatory approvals following the effective date of the agreement but may not begin the actual construction work until after the expiration of the existing Penrod Lease and Penrod Concession Agreements on May 6, 2026.

5. Hours of Operation

- Beach Concession: open 1 hour after sunrise and close 1 hour prior to sunset
- First-floor outdoor Mediterranean restaurant: 11 am-7 pm
- Second-floor Japanese steakhouse: 5 pm-11 pm
- Sadelle's Boardwalk Cafe: 9 am-5 pm
- Outdoor lounge, pool, Kids Club, wellness, retail: 11 am-7 pm

6. Renovations

Boucher Brothers will invest $26,226,920 in the renovation of the facility, which will include renovating the main building, outdoor areas, parking lot, and adjacent public restrooms, and the addition of a pool and retail areas. The planned renovations must comply with all applicable development regulations, and the approval of the Building and Planning Departments, as well as the Design Review Board and the Planning Board.

The agreement requires Boucher Brothers to invest the full proposed amount of $26,226,920 into the project. Any savings will be placed into an account, the use of which must be mutually agreed upon by the parties.

7. Maintenance

The Concessionaire accepts the use of the Concession Area in its "as is, where is" condition with all faults other than any hazardous materials or other environmental issues existing in the Concession Area prior to the Occupancy Date. Concessionaire shall maintain or cause to be maintained, at its own cost and expense, the Concession Area, the Concession Area Structures, and the Public Parking Area in a first-class manner which is at least equal to the condition and quality of high-end beach establishments in other world-class beach resorts.

8. Early Termination of Agreement in the Event of a Financial Emergency

In the event of a financial emergency, as defined in the agreement, and the City Commission's tentative approval (i.e., subject to any other required approvals, including a voter referendum) of a sale of the City property that encompasses the Concession Area, then the City shall have the right to terminate this Agreement upon not less than one hundred eight (180) days prior written notice to Concessionaire, provided that (a) the early termination notice shall not be earlier than the first day of the sixth (6^{th}) Agreement Year and (b) the City shall pay Concessionaire the early termination payment. The early termination payment is intended to compensate the Concessionaire for the loss of anticipated profits that it would derive from the operations for the time remaining in the term, less the fair market value of any FF&E (furniture, fixtures and equipment) to be removed by Concessionaire from the Concession Area) plus the reasonable

costs incurred in connection with the early termination. The loss of anticipated profits and fair market value of FF&E is to be determined by mutual agreement of the parties, but if the parties cannot agree, these amounts are to be determined pursuant to appraisal provisions included in Section 25 of the Agreement.

9. Public Benefits

The public benefits included in the agreement are detailed in Attachment C to the Commission Memorandum accompanying this Resolution, including the salary of two police officers and a park ranger; a minimum of 250 square feet for a police sub-station or other uses as determined by the City; a reservation application (app) and discounts for Miami Beach residents; funding for the mobile food pantry, senior programs, City public schools, dune maintenance/restoration, and the Victory Community Garden; mechanical sifting from Government Cut to 5th Street; litter clean-up; and, improvements at the children's playground at 13 Street and Ocean Drive, and at the Bark Park on Washington Avenue; and, accessibility equipment.

10. Revenue

- **Upfront Payments**: Concessionaire shall pay to the City a total of $4,000,000.00 in upfront payments, payable in four (4) equal non-refundable installments of $1,000,000.00 due on (a) the Effective Date, (b) on or before January 10, 2025, (c) on or before January 10, 2026, and (d) on or before January 10, 2027. Such upfront payments shall be applied to the 1st year minimum rent guarantee. The upfront payments shall be applied to the minimum guarantee for the first year of the term.

- **Minimum Annual Guarantee**: The Concessionaire shall pay the City an annual minimum guarantee of $4,000,000.00, which shall be increased by 3% annually beginning in year 2. In addition, after the fifth term year, the minimum guarantee will be reset to the greater of (a) the existing Minimum Fixed Rent or (b) 80% of the average of the actual rent paid during the past five (5) years. The projected minimum revenue to the City over the term is $45,855,517.

- **Percentage of Gross Receipts**: Annually, the Concessionaire shall pay to the City ten percent (10%) of Gross Receipts in excess of the amount of the then-current minimum annual guarantee. In addition, the Concessionaire shall pay the City an additional five percent (5%) of gross receipts between $65,000,000 and $70,000,000; and

* * * * *

WHEREAS, based on the foregoing, the Administration recommends that the Mayor and City Commission approve the negotiated Concession Agreement for the Management and Operation of a High-End Beach Establishment with Boucher Brothers Pier Park, LLC.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approves the Concession Agreement for the Management and Operation of a High-End Beach Establishment with Boucher Brothers Pier Park, LLC in the form attached as Exhibit A hereto; and further, authorize the Administration to finalize the Agreement; and further authorize the City Manager and City Clerk to execute the Concession Agreement.

PASSED AND ADOPTED this 18 day of October 2023.

ATTEST:

OCT 20 2023

RAFAEL E. GRANADO, CITY CLERK

DAN GELBER, MAYOR

MIAMI BEACH INCORPORATED MARCH 26 1915

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 10-12-23 Date

Exhibit A
Concession Agreement for the Management and Operation of a High-End Beach Establishment

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: October 18, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE CONCESSION AGREEMENT WITH BOUCHER BROTHERS MANAGEMENT LLC, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-479-KB FOR THE MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE CONCESSION AGREEMENT.

RECOMMENDATION

Pursuant to Resolution 2023-32783, the Administration has negotiated a concession agreement with Boucher Brothers for the operation of a high-end beach establishment at One Ocean Drive. The concession agreement is attached hereto (see Attachment A) for the consideration and approval of the Mayor and the City Commission.

BACKGROUND/HISTORY

On May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the Administration to prepare and issue Request for Proposals (RFP) 2023-479-KB for the management and operation of a high-end beach establishment at One Ocean Drive, also known as Pier Park, and the adjacent concession area (the "Concession Area"), with the new agreement taking effect after the expiration of the existing Penrod Lease and Penrod Concession Agreements, which end on May 6, 2026. The RFP allowed bidders to submit proposals for up to two independent proposal alternates - Option 1 for an agreement having a term of less than 10 years and Option 2 for an agreement having a term of up to 30 years.

On August 31, 2023, the City received proposals from the following firms for Options 1 and 2:

Option 1	Option 2
• Boucher Brothers Management, Inc. • Tao Group Hospitality/One Ocean Hospitality • The Group US Management LLC	• Boucher Brothers Management, Inc. • RH • Tao Group Hospitality/One Ocean Hospitality • The Group US Management LLC

On September 11, 2023, the Evaluation Committee convened to consider the proposals received. For Option 1, the proposal submitted by Boucher Brothers was the unanimously top-

ranked proposal by the Evaluation Committee. For Option 2, the Evaluation Committee process resulted in a tie between the proposals submitted by Boucher Brothers and The Group US Management.

After a thorough review of the facts of the procurement, the results of the evaluation committee process, the financial analysis of the 10-year option versus the 30-year option, and the best interests of the City with regard to the property, on September 27, 2023, the City Manager recommended that the Mayor and City Commission authorize the Administration to negotiate an agreement for Option 1 with Boucher Brothers, the unanimous top-ranked bidder for Option 1. The full details and analysis of the RFP process are included in the attached City Commission memorandum dated September 27, 2023 (see Attachment B).

On September 27, 2023, the Mayor and City Commission approved Resolution 2023-32783, accepting the recommendation of the City Manager with regard to the proposals received in response to the RFP and authorizing the Administration to negotiate an agreement with Boucher Brothers based on its Option 1 proposal.

ANALYSIS

As directed by the Mayor and City Commission, the Administration and Boucher Brothers ("Concessionaire") have finalized negotiations on a concession agreement for the management and operation of a high-end beach club in the Concession Area. The negotiated concession agreement is attached as Attachment A. The material terms of the agreement are as follows.

Important Dates

Effective Date means the date that the agreement is fully executed by all parties, typically ten (10) days after contract approval.

Occupancy Date means the date upon which the Concessionaire is permitted to occupy and use the Concession Area, which is anticipated to be May 7, 2026.

Commencement Date means August 1, 2027, subject to extension due to unavoidable delays, or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first.

Concession Area

The Concession Area is depicted in Exhibit 1.0 to the Concession Agreement and generally includes all areas in the Penrod lease and concession agreements, which is inclusive of the building and adjacent outdoor areas, the beach concession area, and the parking lot. As to the parking lot, the City will retain 72 parking spaces for municipal uses.

Uses

The Concessionaire is authorized to conduct the following kinds of businesses and provide the following kinds of services in the Concession Area.

- Rental of Beach and Pool Equipment. In connection with the Beachfront Operations and the Pool Operations, Concessionaire shall be permitted to rent Beach and Pool Equipment including, but not be limited to, beach beds, beach chairs (including lounge chairs), pads, umbrellas, cabanas, sun canopies, flotation devices and such other related equipment as approved by the City Manager or his/her designee pursuant to this Agreement.

· Restaurant Operations and Café Operations. The Concessionaire shall enter into a subcontract with Major Food Group with respect to the Restaurant Operations and Café Operations at the Concession Area. The Restaurant Operations shall consist of the construction and operation of three (3) distinct dining concepts at the Concession Area, with the initial concepts being a daytime casual dining concept on the first floor of the building on the Concession Area, another being an evening upscale dining concept on the second floor of the building on the Concession Area, and the third being an outdoor upscale café concept (the "Outdoor Café"). The proposed final dining concepts, or any change in the future, shall be submitted to the City by or before April 1, 2024, for the prior written approval of the City Manager or his or her designee.

· Kids Club. Concessionaire shall enter into a subcontract with Nannywisdom, LLC, d/b/a itavi®, with respect to the Kids Club operations at the Concession Area. The Kids Club Operations shall be a high-end quality children's center operated in accordance with the itavi® Method and will provide free childcare services, subject to availability, for the children or legal wards of patrons of the restaurants, health and wellness center and/or retail pavilion while patrons are physically present on-site. The Kids Club shall be a dedicated, secure, indoor location inside the building on the Concession Area and will include a secure, private bathroom for children from the approximate ages of 4 to 12 years of age and furnished with age-appropriate furniture.

· Health and Wellness Center. The Concessionaire shall have the right to operate or subcontract for the operation of the wellness operations, which shall consist of a high-end quality health and wellness facility.

· Sale of Beach-Related Sundries and Skin Care Products by Concessionnaire. Concessionnaire shall have the right to sell beach-related sundries and skin care products (such as lotions, oils, and other skin care products) in the beachfront area and pool area.

· Retail Pavilion. Concessionaire shall have the right to operate the retail pavilion consisting of, among other things, a collection of retail shops which may include, but not be limited to, art galleries comprised of unique, emerging local talent side by side with established artists, artisanal food shops, fashion and design shops and floral shops.

· Prohibited Uses. Concessionaire shall not use the Concession Area for any of the following purposes: (a) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Concession Area, and then only for thirty (30) days after the date of any such damage; (b) as an auction or flea market; (c) any business in which Concessionaire is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (d) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (e) coinbox entertainment (pinball, video games, moving pictures operated by coins); (f) casino gambling or games of change or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (g) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or for any purpose or in any way in violation of Concessionaire's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (h) movie

theatre; (i) medical facilities and offices; (j) check cashing facilities; (k) pawn shops; (l) the sale of firearms; (m) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (m) places of worship; (n) political offices; (o) military recruiting; (p) consular, legation or any other offices of foreign governments; (q) tire sales; (r) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (s) offices for the practice of veterinary medicine; (t) the sale of major appliances as a primary business; (u) housing or sleeping quarters; (v) grocery stores (other than specialty gourmet shops); (w) second hand stores; and/or (x) in any manner that will violate any Certificate of Occupancy or Certificate of Use for the Concession Area or any portion thereof, or which will violate any Requirements applicable to the Concession Area.

Term

The term of the agreement with Boucher Brothers is nine (9) years and 364 days, commencing on August 1, 2027, subject to any unavoidable delays, or the date on which any of the Concession Operations are fully open to the public for business, whichever occurs first. While the agreement becomes effective upon execution, the term is scheduled to begin after the renovations, which are expected to take 13 months, have been completed. Boucher Brothers may begin the design process, permitting, and the required regulatory approvals following the effective date of the agreement but may not begin the actual construction work until after the Penrod agreement expires on May 6, 2026.

Hours of Operation

- Beach Concession: open 1 hour after sunrise and close 1 hour prior to sunset
- First-floor outdoor Mediterranean restaurant: 11 am-7 pm
- Second-floor Japanese steakhouse: 5 pm-11 pm
- Sadelle's Boardwalk Cafe: 9 am-5 pm
- Outdoor lounge, pool, Kids Club, wellness, retail: 11 am-7 pm

Renovations

Boucher Brothers will invest $26,226,920 in the renovation of the facility, which will include renovating the main building, outdoor areas, parking lot, and adjacent public restrooms, and the addition of a pool and retail areas. The planned renovations must comply with all applicable development regulations, and the approval of the Building and Planning Departments, as well as the Design Review Board and the Planning Board.

The agreement requires Boucher Brothers to invest the full proposed amount of $26,226,920 into the project. Any savings will be placed into an account, the use of which must be mutually agreed upon by the parties.

Maintenance

The Concessionaire accepts the use of the Concession Area in its "as is, where is" condition with all faults other than any hazardous materials or other environmental issues existing in the Concession Area prior to the Occupancy Date. Concessionaire shall maintain or cause to be maintained, at its own cost and expense, the Concession Area, the Concession Area Structures, and the Public Parking Area in a first-class manner, at the sole discretion of the City Manager, which is at least equal to the condition and quality of high-end beach establishments in other world-class beach resorts.

Early Termination of Agreement in the Event of a Financial Emergency

In the event of a financial emergency, as defined in the agreement, and the City Commission's tentative approval (i.e., subject to any other required approvals, including a voter referendum) of a sale of the City property that encompasses the Concession Area, then the City shall have the right to terminate this Agreement upon not less than one hundred eight (180) days prior written notice to Concessionaire, provided that (a) the early termination notice shall not be earlier than the first day of the sixth (6^{th}) Agreement Year and (b) the City shall pay Concessionaire the early termination payment. The early termination payment is intended to compensate the Concessionaire for the loss of anticipated profits that it would derive from the operations for the time remaining in the term, plus the reasonable costs incurred in connection with the early termination.

Public Benefits

The public benefits included in the agreement are detailed in Attachment C, including the salary of two police officers and a park ranger; a minimum of 250 square feet for a police sub-station or other uses as determined by the City; a reservation application (app) and discounts for Miami Beach residents; funding for the mobile food pantry, senior programs, City public schools, dune maintenance/restoration, and the Victory Community Garden; mechanical sifting from Government Cut to 5^{th} Street; litter clean-up; and, improvements at the children's playground at 13 Street and Ocean Drive, and at the Bark Park on Washington Avenue; and, accessibility equipment.

Revenue

- Upfront Payments: Concessionaire shall pay to the City a total of $4,000,000.00 in upfront payments, payable in four (4) equal non-refundable installments of $1,000,000.00 due on (a) the Effective Date, (b) on or before January 10, 2025, (c) on or before January 10, 2026, and (d) on or before January 10, 2027. Such upfront payments shall be applied to the 1st year minimum rent guarantee. The upfront payments shall be applied to the minimum guarantee for the first year of the term.

- Minimum Annual Guarantee: The Concessionaire shall pay the City an annual minimum guarantee of $4,000,000.00, which shall be increased by 3% annually beginning in year 2. In addition, after the fifth term year, the minimum guarantee will be reset to the greater of (a) the existing Minimum Fixed Rent or (b) 80% of the average of the actual rent paid during the past five (5) years. The projected minimum revenue to the City over the term is $45,855,517.

- Percentage of Gross Receipts: Annually, the Concessionaire shall pay to the City ten percent (10%) of Gross Receipts in excess of the amount of the then-current minimum annual guarantee. In addition, the Concessionaire shall pay the City an additional five percent (5%) of gross receipts between $65,000,000 and $70,000,000.

SUPPORTING SURVEY DATA

N/A

FINANCIAL INFORMATION

N/A

Amount(s)/Account(s):

Financial information is included in the Analysis section above. This will be a revenue producing agreement.

CONCLUSION

Based on the foregoing, it is recommended that the Mayor and City Commission approve the agreement with Boucher Brothers for the operation of a high-end beach establishment at One Ocean Drive.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	**Does this item utilize G.O. Bond Funds?**
Yes	No

Legislative Tracking

Facilities and Fleet Management/Procurement

ATTACHMENTS:

Description

- Resolution
- Attachment A - Concession Agreement 2023 Pier Park
- Attachment B - Commission Memorandum dated September 27, 2023, for the award of the RFP
- Attachment C - Public Benefits

Exhibit A
Concession Agreement for the Management and Operation of a High-End Beach Establishment

Boucher Brothers Pier Park, LLC

Concession Agreement for Management and Operation of a High-End Beach Establishment

CONCESSION AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND BOUCHER BROTHERS PIER PARK, LLC FOR MANAGEMENT AND OPERATION OF HIGH-END BEACH ESTABLISHMENT CONCESSIONS

THIS CONCESSION AGREEMENT FOR MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT ("Agreement") is made this _____ day of _____, 2023 (the "Effective Date"), between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (**"City"**), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **BOUCHER BROTHERS PIER PARK, LLC**, a Florida limited liability company, with offices at 1451 Ocean Drive, Suite 205, Miami Beach, Florida 33139 **("Concessionaire").**

WHEREAS, on May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the City Administration to prepare and issue a Request for Proposals ("RFP") to seek proposals from firms interested in being considered to negotiate an agreement(s) with the City for the management or operation of a high-end beach establishment and ancillary uses on the property located at One Ocean Drive and adjacent beachfront concession area as legally defined and graphically depicted on ***Exhibit 1.0*** hereto (the "Concession Area"), with the agreement(s) taking effect after the expiration of an existing Lease Agreement dated November 7, 1985 between the City and Penrod Brothers, Inc. and an existing Concession Agreement dated February 25, 2004 between the City and Penrod (the "Existing Concession Area Agreements"), both of which will expire on May 6, 2026 and which collectively encompass a majority of the Concession Area;

WHEREAS, on June 13, 2023, RFP 2023-479-KB for the management or operation of a high-end beach establishment was issued;

WHEREAS, on September 27, 2023, as recommended by the City Manager, the Mayor and City Commission authorized the City Administration to negotiate with Boucher Brothers Pier Park, LLC, the successful proposer; and

WHEREAS, on _____, 2023, the Mayor and City Commission adopted Resolution No. 2023-_____, approving this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the City and Concessionaire agree as follows:

SECTION 1. TERM AND CERTAIN DEFINITIONS.

1.1 This Agreement shall be effective as of the Effective Date, but the Term hereof shall not commence until the earlier of: (a) August 1, 2027 subject to extension due to Unavoidable Delays (as hereafter defined) and (b) the date on which any of the Concession Operations (as hereinafter defined) have been issued a certificate of use or certificate of completion, as applicable, and are fully open to the public for business (the earlier of such dates, the

"Commencement Date"). The term hereof (the "Term") shall begin on the Commencement Date and shall expire at 11:59 p.m. on the three hundred and sixty-fourth (364th) day of the tenth (10th) year (the "Expiration Date"). Within five (5) days of the Commencement Date of the Term, City and Concessionaire shall complete and execute a Confirmation of Commencement Date Certificate in the form attached hereto as ***Exhibit 1.1*** to document the beginning and end of the Term.

1.2 The City shall have the right to terminate this agreement prior to the Expiration Date pursuant to Section 19 (Event of Default) and Section 25 (Early Termination Right in Event of Financial Emergency), when applicable.

1.3 Concessionaire shall be permitted to use and occupy the Concession Area for all purposes contemplated by this Agreement on or after the Occupancy Date subject to satisfaction of the following conditions precedent (the "Occupancy Conditions"):

(i) There exists no uncured Event of Default;

(ii) Concessionaire shall have provided to City, and City Manager or his or her designee shall have approved the Plans and Specifications;

(iii) all final, non-appealable Project Approvals shall have been issued;

(iv) Concessionaire shall have entered into, and delivered to the City a duly executed copy of, the General Construction Contract (and all then existing change orders thereto);

(v) Concessionaire shall have obtained, and shall have delivered to Owner a copy of, all Permits and Approvals necessary for the Work, including the Building Permit; and Concessionaire's parking and transportation plan for off-site parking and transportation;

(vi) Concessionaire shall have delivered to the City the Payment and Performance Bond;

(vii) Concessionaire shall have delivered to the City a parking mitigation plan in form and substance acceptable to the City in its sole discretion that addresses both loss of parking by providing for alternate parking within proximity of the existing public parking spaces (not greater than one-half mile) and loss of revenue to the City;

(viii) Concessionaire shall have delivered to the City certificates of insurance evidencing that all insurance coverages required under this Agreement are in place;

(ix) Concessionaire shall have delivered to the City, a duly executed assignment of Plans and Specifications, and a duly executed assignment of General Construction Contract and assignment of Construction Agreements, pursuant to which the City shall have the right, without assuming the Concessionaire's obligations, to enforce the Architect's and General Contractor's, as applicable, full and prompt performance under their respective agreements, subject only to payment by the City, which

assignment of Construction Agreements shall be substantially in the form attached hereto as ***Exhibit 1.3***;

(x) The representations and warranties made by Concessionaire pursuant to Section 30 of this Agreement are true and correct on and as of the Occupancy Date;

(xi) no lawsuit shall be pending, which prevents or restricts Concessionaire from using or occupying the Concession Area and/or commencing construction of the Work; and

(xii) Concessionaire shall have delivered a duly executed written notice by Concessionaire to the City certifying that all Occupancy Conditions have been satisfied in form and substance acceptable to the City, which notice shall be acknowledged and countersigned by the City.

1.4 For all purposes of this Agreement, the terms defined in this Section 1.2 shall have the meanings set forth below:

1.4.1 "Affiliate" or "Affiliates" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by, or is under common Control with, such Person.

1.4.2 "Agreement Year" means each one (1) year period during the Term commencing on the Commencement Date, provided, the final Agreement Year shall be the period of three hundred sixty-four (364) days commencing on the ninth anniversary of the Commencement Date and ending at 11:59 p.m. on the Expiration Date.

1.4.3 "Budget" means the budget for the design, permitting, and development of the Concession Area (including the costs of construction for the Work) submitted by Concessionaire to the City with its RFP proposal, a copy of which is attached hereto as Exhibit 1.4.3. The Budget does not include costs of so-called "OS&E" (e.g., chinaware, glassware, silverware, smallwares, cookware, linens, housekeeping equipment, uniforms, disposables, etc.).

1.4.4 "Building Permit" means a "Full Building Permit" as such term is defined in the City's Land Development Regulations, issued by the Building Department of the City, which allows building or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

1.4.5 "Business Day" or "business day" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

1.4.6 "City Land Development Boards" means, collectively, the Design Review Board and the Planning Board.

1.4.7 "Concession Area" has the meaning set forth in the Recitals, provided, for the avoidance of doubt, where the context requires, Concession Area shall be deemed to include all Concession Area Structures.

1.4.8 "Contractor" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with construction of the Work or any other renovations or construction at the Concession Area.

1.4.9 "Control" "Controlling" and "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable).

1.4.10 "Development Order" means any order granting, denying or granting with conditions an application for a Development Permit.

1.4.11 "Development Permit" includes any building permit (including the Building Permit), zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

1.4.12 "Financial Emergency" shall have the meaning set forth in Section 25.

1.4.13 "Force Majeure Event" means the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; restrictions or restraints imposed by law, rules, regulations or orders of any civil or military authority (collectively, "Restraints"); civil disorder; insurrections; riots; acts of terrorism; war; sabotage; epidemics such as Ebola, Zika, SARD and swine flu; pandemics such as COVID-19 coronavirus; any public health emergency requiring quarantine, business closures mandated by Governmental Authorities or shelter in place orders; any governmental moratorium preventing the issuance of Permits and Approvals; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; earthquake; windstorm; natural disaster; tropical depressions; red tides; algae blooms; seaweed inundations; significant beach erosion; oil spills; other environmental issues materially adversely impacting the Concession Area; street closures or adjusted traffic patterns which prevent access by the public to the Concession Area; sabotage; riots, civil disturbances; fires; explosions; floods; washouts and other natural disasters; verifiable and industry-wide inability to procure or a general shortage of labor, equipment, utilities, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable control of the party claiming such inability. In no event shall "Force Majeure Event" include economic hardship, financial inability to perform specific to the party or the failure to secure Permits and Approvals. When applicable based on the context, the period of a Force Majeure Event shall extend from the occurrence of the Force Majeure Event until such time as the Force Majeure Event is over and any applicable Restraints are lifted.

1.4.14 "General Construction Contract" means the construction contract between Concessionaire and the General Contractor for the construction of the Work in accordance with the approved Plans and Specifications for such Phase, within the contract time

specified therein for completion of the Work for a guaranteed maximum price that as of the date of commencement of construction will, in the aggregate, equal or exceed the sum allocated for construction of the Work as reflected in the Budget (except to the extent that any reduction is reasonably attributable to a reduction in local area construction costs, as established by a published construction price index or otherwise approved by the City Manager) and that includes provisions requiring a Performance Bond and Payment Bond and all other terms or conditions required under this Agreement.

1.4.15 "General Contractor" means the duly licensed general contractor engaged by Concessionaire for the construction of the Work and approved by the City in accordance with this Agreement.

1.4.16 "Governmental Authority or Authorities" means the United States of America, the State of Florida, the City (acting in its governmental, not proprietary, capacity), Miami-Dade County, and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Concessionaire, or any subconcessionaire, subcontractor or other occupant of, or over or under the Concession Area or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Concession Area, or any vault in or under the Concession Area, or airspace over the Concession Area.

1.4.17 "Improvements" shall have the meaning set forth in Section 11.1.

1.4.18 "Occupancy Date" means the date following the expiration of the Existing Concession Area Agreements on which the Concessionaire satisfies all of the Occupancy Conditions and is permitted to use and occupy the Concession Area for the purposes contemplated in this Agreement.

1.4.19 "Permits and Approvals" means any and all permits and approvals required to be issued by Governmental Authorities in connection with the Work, including, without limitation, the City of Miami Beach building permits, the approvals of the City Land Development Boards, the Miami-Dade County Department of Environmental Resources Management permits, any required State of Florida Department of Environmental Protection permits, and any utility access agreements with all applicable utility companies, Development Permits and Development Orders.

1.4.20 "Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; a foreign government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

1.4.21 "Plans and Specifications" means, the final plans and specifications for all Work, including, as applicable, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the program and such other plans and specifications customarily required to obtain a Full Building Permit in the City of Miami Beach, Florida, each as established in accordance with Section 7.

1.4.22 "Preliminary Plans and Specifications" has the meaning set forth in Subsection 7.1.1.

1.4.23 "Project Approvals" means the approval of the applicable City Land Development Boards for the Work.

1.4.24 "Project Approvals Delays" means the number of days in excess of one hundred twenty (120) days (with such 120-day period being measured from the date of Concessionaire's submission of its initial application to the City Land Development Boards) after which Concessionaire obtains approvals from the City Land Development Boards but only to the extent such additional days in excess of one hundred twenty (120) days are the result of the City Land Development Boards' requirement of any revisions to the Preliminary Plans and Specifications that were approved by the City in accordance herewith.

1.4.25 "Requirements" means:

(a) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Concession Area or Concession Area Structures or any street, road, avenue or sidewalk comprising a part of, or lying in front of or adjacent to, the Concession Area or Concession Area Structures or any vault in, or under the Concession Area or Concession Area Structures (including, without limitation, any of the foregoing relating to handicapped access or parking, the Florida Building Code and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines and all EEO regulations and guidelines);

(b) conditions set forth in any Permits and Approvals;

(c) the temporary and/or permanent certificate or certificates of occupancy issued for the Concession Area or Concession Area Structures as then in force;

(d) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27;

(e) the requirements of the City of Miami Beach Workforce Participation Program, Miami Beach City Code, Section 31-40; and

(f) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Concessionaire under this Agreement.

1.4.26 "Unanticipated Site Conditions" means (a) concealed or subsurface conditions within or proximate to the Concession Area that could not have been reasonably anticipated by Concessionaire or reasonably discoverable and/or is not actually discovered by Concessionaire through customary diligence, including, for example, Hazardous Materials (as defined in Section 10.7.1) or other environmental issues or conditions, unmapped utilities or any unknown environmental condition, geothermal system, geotechnical condition, or similar concealed condition not reasonably discoverable prior to the commencement of Construction Work; and (b) encumbrances on the Concession Area that are either unrecorded or revealed by any title update obtained by Concessionaire following the Effective Date (and were not disclosed in any prior title report or commitment

or otherwise contemplated by this Agreement), which materially and adversely impact the prosecution of the Work.

1.4.27 "Unavoidable Delays" means a delay arising out of (a) a Force Majeure Event, (b) Unanticipated Site Conditions, (c) any lawsuit is filed and pending which prevents or restricts Concessionaire from using and occupying the Concession Area or commencing construction of the Work, and/or (d) a Project Approvals Delay, in each case, which actually prevents or delays performance and that (i) is beyond the reasonable control of Concessionaire, (ii) is not due to the negligent or intentional act, error or omission of Concessionaire and (iii) if occurring after the commencement of any construction work, directly impacts the progress of such construction work. "Unavoidable Delay" shall not include technological interruption or malfunction, failure of equipment supplied by Concessionaire, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Concessionaire or any Contractor to secure the required permits for prosecution of the Work (except to the extent caused or contributed to by a Project Approvals Delay); provided that Concessionaire delivers written notice to the City of such Unavoidable Delay within ten (10) business days after first becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay, and Concessionaire shall diligently use commercially reasonable efforts to attempt to remove, resolve or otherwise seek to mitigate such delay and keep the City advised with respect thereto. Time is of the essence with respect to this provision, and any failure by Concessionaire to timely deliver notice of an Unavoidable Delay shall be deemed a waiver of Concessionaire's right to delay performance or to postpone any dates as a result of such Unavoidable Delay. Notwithstanding the provisions of Section 23, for purposes hereof, notice by Concessionaire shall be deemed sufficiently given to the City if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable thereafter a copy of such notice is delivered pursuant to the terms of Section 23 hereof. The times for performance set forth in this Agreement (other than for monetary obligations of Concessionaire) and the Commencement Date shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Agreement. If two or more separate events of Unavoidable Delay are concurrent with each other, Concessionaire shall only be entitled to an extension of time for each day of concurrent critical path delay, and Concessionaire shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Concessionaire shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) Concessionaire's financial condition or inability to fund or obtain funding or financing constitute an Unavoidable Delay, or (ii) any delay arising from Concessionaire's default (whether or not the default is subsequently cured) under this Agreement constitute an Unavoidable Delay.

1.4.28 "Work" means the design, permitting, development and construction of improvements substantially in accordance with the Plans and Specifications approved by the City in accordance herewith, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Permits and Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or

appropriate for the demolition of existing structures and other preparatory or remediation work on the applicable portion of the Concession Area; utility relocations, installations, hook-ups or other infrastructure as may be required in connection with the improvements and the Concessionaire's proposed operations thereon and to obtain certificates of occupancy or certificates of completion for the Work; and total design, construction, installation, and functioning of all improvements to the extent necessary to obtain certificates of occupancy for the Concession Operations, and together with all additional, collateral and incidental items, work and services required for completion of construction of the improvements.

1.4.29 In the event of a dispute between the City and Concessionaire as to the meaning of "first-class" or "world-class" and words of similar import used in this Agreement, the City Manager's (or his or her designee's) decision, in that Person's sole discretion, shall control.

SECTION 2. CONCESSION AREAS AND OPERATIONS; COMMITTED INVESTMENT IN IMPROVEMENTS BY CONCESSIONAIRE; SCHEDULE.

2.1 The City hereby grants to Concessionaire the exclusive right, during the Term, to establish, operate and manage all Concession Operations (as defined in Section 2.2 below) upon the Concession Area and to enter into subcontracts, and grant exclusive rights consistent with the terms of this Agreement, with approved Subconcessionaires. The Concession Area includes three (3) structures landward of the Erosion Control Line, including a main building, a storage building and a public restroom (existing structures together with any new structures constructed by Concessionaire, the "Concession Area Structures"), that will be improved by Concessionaire. The rights granted to Concessionaire herein include the exclusive right to occupy and use the Concession Area Structures. The Concessionaire acknowledges and agrees that the State of Florida retains ownership over the public sandy beach area east of the Erosion Control Line included within the Concession Area (the "Beachfront Area") and the City's interest in the Beachfront Area is limited to management responsibilities pursuant to that certain Management Agreement dated February 3, 1982 for Certain Lands in the City of Miami Beach, Florida between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("TIITF") and the City, as amended by Amendment Number 1 dated February 7, 2007 (as the same may be amended from time to time during the Term, the "Beachfront Management Agreement"). All of the terms and conditions of the Beachfront Management Agreement are incorporated herein by this reference and any amendments to the Beachfront Management Agreement shall automatically be incorporated into this Agreement. If the Beachfront Management Agreement expires or is terminated at any time and for any reason during the Term, the City shall give prompt written notice thereof to Concessionaire and the Beachfront Area shall be excluded from the Concession Area for all purposes of this Agreement from and after the expiration or termination date. The City and Concessionaire shall meet promptly and renegotiate, if and as necessary, the Minimum Guaranteed Annual Concession Fee (as defined in Section 4.2) in good faith by reviewing Gross Receipts derived from the Beachfront Operations (as defined in Section 2.2), including Gross Receipts attributable to food and beverage sales and the sale of Beach-Related Sundries in the Beach Area in the three (3) prior Agreement Years.

2.2 The concessions to be operated by Concessionaire at the Property, directly or indirectly through a subcontract (as duly approved by the City as provided herein), shall include (a) operations for the rental of Beach and Pool Equipment at the Beachfront Area (the "Beachfront Operations") as delineated on the site plan attached hereto as ***Exhibit 2.2*** and incorporated

herein by this reference ("Site Plan"); (b) operations for the rental of Beach and Pool Equipment at the Cabana Area (also referred to as the "Spoils Area") and Pool Area as delineated on the Site Plan (collectively, the "Pool Operations"); (c) operations for the preparation and sale of food and beverages at the Restaurant Area as delineated on the Site Plan (the "Restaurant Operations"); (c) operations for the preparation and sale of food and beverages at the Café Area as delineated on the Site Plan (the "Café Operations"); (d) operations for childcare services at the Kids Club Area as delineated on the Site Plan ("the Kids Club Operations"); (f) operations for health and wellness services at the Health and Wellness Center Area as delineated on the Site Plan (the "Wellness Operations"); (g) operations associated with retail shops at the Retail Pavilion as delineated on the Site Plan (the "Retail Operations") and (h) any incidental revenue-generating operations and activities ancillary to the foregoing in the Concession Area, including without limitation the sale of Beach-Related Sundries ("Incidental Concessions", and together with the Beachfront Operations, the Pool Operations, the Restaurant Operations, the Café Operations, the Childcare Operations, the Health and Wellness Operations and the Retail Operations, the "Concession Operations").

2.3 The Concession Operations in the Beachfront Area are subject to the following specific limitations.

2.3.1 Southern Accessibility Zone:

With regard to the area bounded to the north by a line 50 feet north of the southern boundary of the Beach Area; to the south by the southern boundary of the Beachfront Area; and bounded to the east and west by the easternmost and westernmost boundaries of the Beachfront Area, Concessionaire shall not deploy any Beach and Pool Equipment within this zone (the "Southern Accessibility Zone"), unless specifically requested by a patron who uses a wheelchair.

2.3.2 Northern Accessibility Zone:

With regard to the area bounded to the south by a line 50 feet south of the northern boundary of the Beachfront Area; to the north by the northern boundary of the Beachfront Area; and bounded to the east and west by the easternmost and westernmost boundaries of the Beachfront Area, Concessionaire shall not deploy any Beach and Pool Equipment within this zone (the "Northern Accessibility Zone"), unless specifically requested by a patron who uses a wheelchair.

2.3.3 Beach Front and Other Areas:

The City and Concessionaire agree and acknowledge that the public's use of the Beachfront Area is of prime consideration. Accordingly, the Concessionaire shall use commercially reasonable efforts to strive to maintain approximately forty-nine (49%) percent of the beach frontage within the entire Beachfront Area free and clear of Beach and Pool Equipment and any other facilities and equipment, so that such portion of the beach may remain free and clear for the public's use and enjoyment.

Concessionaire hereby acknowledges and agrees that the Beachfront Area, along with any and all other public beachfront areas not specifically identified herein, are public and, as such, must remain open, accessible and available for the use and enjoyment of the public, whether or not the public chooses to use any of

Concessionaire's facilities and/or equipment, purchase its products, or engage in any of the services it provides. In the event that a member of the public is within the Beachfront Area, Concessionaire agrees to use good faith, diligent efforts to allow for his/her quiet and peaceful enjoyment of same.
All remaining portions of the Concession Area (i.e., all portions of the Concession Area other than the Beachfront Area) are intended to be used in full for Concession Operations thereon to be run by Concessionaire and its approved Subconcessionaires to fulfill the purposes of this Agreement.

2.3.4 Lifeguard Stands; Lifeguard Facility Zones

City and Concessionaire acknowledge that there are lifeguard stands within the Concession Area. Concessionaire acknowledges and agrees that in the event the City determines in its sole discretion that additional lifeguard stands are necessary within the Concession Area during the Term, the size of the Beach Area may be reduced to accommodate the appropriate buffer area around any such additional lifeguard stands.

Concessionaire shall not use or deploy any Beach and Pool Equipment or any other facilities and/or equipment on or within those portions of the beach where lifeguard stands are located, including the area extending from the easternmost foot of the Dune to the shoreline, and bounded by a line fifty (50) feet (each) to the north and south of a lifeguard stand (each, a "Lifeguard Facility Zone," and together with the Southern Accessibility Zone and the Northern Accessibility Zone, the "Buffer Zones").

2.4 Concessionaire shall initially invest (including amounts that are financed) not less than $26,226,920 (the "Committed Investment") on all costs associated with, and directly related to, the planning, design, and construction of the Improvements, including soft costs, hard costs, kitchen equipment and FF&E, but expressly excluding OS&E (collectively, "Project Costs"), substantially in accordance with the amounts allocated to Project Costs in the categories reflected in the Budget. Amounts allocated to specific line items in the Budget may be reallocated to other line items subject to any adjustments due to increased or decreased costs in particular categories provided such reallocations do not change the design quality or scope of the improvements, landscaping and FF&E described and reflected in the renderings included in Concessionaire's RFP Proposal Tab 4, Section 4.1 - Conceptual Design. Notwithstanding the foregoing, if there is an overall savings on the Project Costs resulting from favorable market conditions, any savings will be placed into a separate, interest-bearing account and the use of such funds must be mutually agreed upon by the parties.

SECTION 3. USES.

Concessionaire is hereby authorized by the City, in its proprietary capacity, to conduct the following kinds of businesses and provide the following kinds of services upon the Property, all of which shall be provided at Concessionaire's sole cost and expense. As hereinafter set forth, Concessionaire is hereby authorized and permitted to enter into subcontracts with different Subconcessionaires to provide the services (each a "Subconcession Agreement" and collectively, "Subconcession Agreements"). The Subconcession Agreements, or any subsequent changes or amendments thereto, are subject to the prior approval of the City Manager or his or her designee. For the avoidance of doubt, the Concessionaire shall be solely responsible for obtaining any and

all amendments to the City's Comprehensive Plan and Land Development Regulations of the City Code that may be required for any of the proposed uses herein, provided the City shall reasonably cooperate with the Concessionaire.

3.1 Rental of Beach and Pool Equipment.

3.1.1 In connection with the Beachfront Operations and the Pool Operations, Concessionaire shall be permitted to rent Beach and Pool Equipment including, but not be limited to, beach beds, beach chairs (including lounge chairs), pads, umbrellas, cabanas, sun canopies, flotation devices and such other related equipment as approved by the City Manager or his/her designee pursuant to this Agreement. Concessionaire shall operate the Beachfront Operations and the Pool Operations in compliance all applicable Requirements.

By or before April 1, 2024, the Concessionaire shall submit a detailed list of all types of Beach and Pool Equipment proposed to be available to patrons at the Beachfront Area and Pool Area (including luxury offerings), and the prices for same, for the approval of the City Manager or his or her designee, and, as approved, shall be attached hereto as ***Exhibit 3.1.1***. The City acknowledges and agrees that Concessionaire shall be entitled to charge market pricing consistent with pricing for similar offerings at first-class resorts in Miami Beach for luxury offerings of Beach and Pool Equipment (e.g., Nova Umbrella, the Luxury Cabana, Luxury Daybed and Luxury Lounge) and such other luxury products as may be approved by the City Manager or his or her designee. Any amendments to ***Exhibit 3.1.1,*** whether as to types of Beach and Pool Equipment to be rented, or as to changes in prices for same, must be approved in writing by the City Manager or his/her designee prior to such changes being implemented within the Concession Area (and, if approved, an updated ***Exhibit 3.1.1*** will be incorporated into this Agreement).

Concessionaire shall be entitled in its sole discretion to disallow the use of products and equipment for safety reasons, including, but not limited to, in the event of inclement weather, water conditions or the condition of patrons.

3.1.2 Concessionaire agrees to provide City resident discounts in accordance with the schedule and criteria set forth in ***Exhibit 3.12.*** Changes to the discount schedule or criteria must be approved in writing by the City Manager or his/her designee prior to such changes being implemented within the applicable Concession Area (and, if approved, an updated ***Exhibit 3.12*** will be incorporated into this Agreement).

3.1.3 The condition and quality of Beach and Pool Equipment shall at all times be maintained in good working order and condition, and in a first-class manner which is equal to, or better than, the condition and quality of beach and pool equipment found in public beach concessions in other world-class beach resorts on par with the City of Miami Beach. Concessionaire hereby agrees and acknowledges that the City and has a substantial economic interest in continuing to promote the City of Miami Beach as a world-class beach destination comparable to other world-class beach destinations and that the quality of the Concession Operations will have a material impact on the manner in which the City of Miami Beach is perceived by the public and news media. Accordingly, Concessionaire shall not only, at a minimum, maintain all Beach and Pool Equipment placed within the Concession Areas in good working order and condition, but shall adhere, as indicated in this subsection, to first-class maintenance standards comparable to those followed by high-end beach establishments in other world-class beach resorts.

3.1.4 By or before April 1, 2024, Concessionaire shall submit sketches, renderings and specifications that include the design, type, material, and color of any and all Beach and Pool Equipment together with photos of same for the approval of the City Manager or his or her designee, and, as approved, shall be attached hereto as is attached and incorporated as ***Exhibit 3.1.4***. Concessionaire shall not change, alter, or modify the design, type, material, and color of any City-approved Beach and Pool Equipment without the prior written consent of the City Manager or his/her designee (and, if so approved, an updated ***Exhibit 3.1.4*** will be incorporated into this Agreement).

3.1.5 By or before April 1, 2024, Concessionaire shall submit a detailed site plan reflecting the proposed placement and maximum number of all Beach and Pool Equipment within the Beachfront Area and Pool Area (including the number of standard chairs and luxury chairs in the Beachfront Area and Pool Area) for the approval of the City Manager or his or her designee, in the City's proprietary capacity, and, as approved, shall be attached hereto as ***Exhibit 3.1.5*** (the "Beach Equipment Site Plan"). Such Beach Equipment Site Plan shall also reflect the proposed location for all Beach and Pool Equipment concession dispensing facilities and storage facilities within the Concession Area. During the Term, all Beach and Pool Equipment shall be placed substantially in accordance with the City-approved Beach Equipment Site Plan. Concessionaire shall not alter the approved Beach Equipment Site Plan without the prior written consent of the City Manager or his/her designee. City and Concessionaire may meet periodically to review and, subject to mutual agreement, revise the maximum numbers for Beach and Pool Equipment in the Beachfront Area and/or Pool Area, and if so revised, an updated ***Exhibit 3.1.5*** will be incorporated into this Agreement. For the avoidance of doubt, all site plans for the Concession Area (including the Beach Equipment Site Plan) will be subject to review by the appropriate City departments, in the City's regulatory capacity.

3.1.6 Except as otherwise provided in this Agreement, the "Set-Up Period" for Beach and Pool Equipment in the Beachfront Area shall commence daily no earlier than one (1) hour after sunrise (or, in the event of inclement weather, as soon thereafter as such weather permits). During the Set-Up Period, Concessionaire shall be permitted to set up to the maximum number of Beach and Pool Equipment allowable for the Beachfront Area.

3.1.7 The parties acknowledge that Concessionaire's patrons may themselves relocate chairs and other Beach and Pool Equipment within the Beachfront Area and/or to an immediately adjacent Buffer Zone. Such relocation shall generally be permitted; provided, that, in the aggregate, Concessionaire shall not materially alter, and use good-faith, diligent efforts not to allow to be materially altered, the configuration of the Beachfront Area from what is set forth in the approved Beach Equipment Site Plan for the Beachfront Area. In such event, Concessionaire shall be responsible for promptly correcting any material alteration made by the patrons (when they leave) to bring the Beachfront Area back into substantial conformance with the approved Beach Equipment Site Plan for the Beachfront Area.

Moreover, if Concessionaire elects to replace a certain number of standard chairs with luxury chairs (above the number of luxury chairs approved pursuant to Section 3.1.5), but not to exceed the aggregate maximum number of chairs permitted under this Agreement, and if at any time thereafter a patron desires a standard chair which is unavailable, due to such replacement, then Concessionaire shall provide the patron with a luxury chair at the standard chair rate.

3.1.8 The City and Concessionaire agree and acknowledge that the public's use of the beach is a prime consideration and must be balanced with the services to be provided to the public, and the respective financial remunerations to City and Concessionaire pursuant to this Agreement. Accordingly, Concessionaire further agrees that, notwithstanding its right to set up its maximum numbers during the Set-Up Period, if during the period of time between the Set-Up Period and 1:00 PM Eastern Standard Time (or 2:00 PM daylight savings time, as applicable) on any day during Concessionaire's hours of operation, more than twenty-five percent (25%) of Concessionaire's maximum number of chairs for the Beachfront Area are vacant ("vacant" being defined for purposes of this subsection as not being rented), then Concessionaire shall remove, at 1:00PM EST (or 2:00PM daylight savings time, as applicable) that day, from the Beachfront Area, that number of chairs that is determined by subtracting the number of chairs equal to twenty-five percent (25%) of the maximum number of chairs permitted for the Beachfront Area from the number of vacant chairs at the relevant time. For example, assuming that 100 chairs are the maximum, if 100 chairs are set up in the Beachfront Area during the Set-Up Period, and 60 are rented and 40 are vacant then, at 1:00PM EST (or 2:00PM, daylight savings time, as applicable), Concessionaire must remove 15 chairs, which equals the difference between the actual number of vacant chairs in the Beachfront Area (i.e., 40) minus 25% of the maximum number of chairs allowable in the Beachfront Area during the Set-Up Period (i.e., 25). If chairs are removed as provided in the preceding sentence, Concessionaire may, later that same day, increase the number of chairs based upon demonstrated increased demand up to the maximum number of chairs permitted for the Beachfront Area.

3.1.9 Notwithstanding anything in this **Section 3.1,** the City's Ocean Rescue Division shall at all times have the sole and absolute discretion to require Concessionaire, and/or Concessionaire's patrons, to relocate chairs and other Beach and Pool Equipment in the event that such chairs and/or other Beach and Pool Equipment in any way impede and/or obstruct sightlines or have any other effect whatsoever which would directly or indirectly impede the performance of Ocean Rescue activities. Concessionaire will use good-faith, diligent efforts to cooperate with Ocean Rescue to promptly ensure compliance with the preceding requirement.

3.1.10 Concessionaire shall procure and maintain the insurance policies required pursuant to Section 14 (Exhibit 14) to cover exposures associated with the Beachfront Operations and the Pool Operations. For the avoidance of doubt, as indicated in ***Exhibit 14.3***, Concessionaire may elect not to procure business interruption coverage for its Beachfront Operations subject to the requirements set forth in such Exhibit.

3.2 Restaurant Operations and Café Operations.

3.2.1 Concessionaire shall enter into a subcontract with Major Food Group, LLC, a Delaware limited liability company, duly qualified to do business within the State of Florida ("MFG"), with respect to the Restaurant Operations and Café Operations at the Property (the "MFG Subcontract"). The Restaurant Operations shall consist of the construction and operation of three (3) distinct dining concepts at the Property, the areas for which are delineated on the Site Plan attached as ***Exhibit 2.1*** (collectively, the Restaurants"), with the initial concepts being a daytime casual dining concept on the first floor of the building on the Property (the "Downstairs Restaurant"), another being an evening upscale dining concept on the second floor

of the building on the Property (the "Upstairs Restaurant") and the third being an outdoor upscale family oriented café concept (the "Outdoor Café"). The proposed final dining concepts shall be submitted to the City by or before April 1, 2024 for the prior written approval of the City Manager or his or her designee. Prior to the opening of the Restaurants to the public, Concessionaire shall provide to the City Manager alcoholic beverage licenses for each of the Restaurants. In the event of a termination or expiration of the MFG Subcontract and in the event that Concessionaire desires to subcontract with another entity (the "Replacement Restaurant Subconcessionaire") to provide food and beverage services and delivery at and from the Restaurants, in the manner and to the extent contemplated under this **Subsection 3.2**, such new request shall be subject to the Concessionaire submitting information with respect to such Replacement Restaurant Subconcessionaire for the City Manager's or his/her designee's prior review and written approval. Furthermore, if the Concessionaire, MFG or another Replacement Restaurant Concessionaire desires to modify one or more of the approved dining concepts, any alternate dining concept shall be submitted to the City for the prior approval of the City Manager or his or her designee. Notwithstanding the approval of MFG or a Replacement Restaurant Subconcessionaire, Concessionaire remains directly responsible to the City for payment of the PG upon the Gross Receipts (as said terms are hereinafter defined) relating to Gross Receipts generated by such Subconcessionaire's Restaurant Operations even if the Subconcessionaire fails to make payment of any amount due to Concessionaire under its Subcontract.

3.2.2 By or before April 1, 2025, Concessionaire shall submit the material terms to be included in the MFG Subcontract to the City for the approval of the City Manager or his or her designee, and, as approved, shall be attached hereto as ***Exhibit 3.2.2***. At the request of Concessionaire, such terms may be amended subject to the prior approval of the City Manager or his or her designee. The terms of the MFG Subcontract or of any contract entered into with any Replacement Restaurant Subconcessionaire shall include waivers of recovery against the City and indemnification in favor of the City substantially as set forth in paragraphs 2 and 3 of ***Exhibit 7.6***.

3.2.3 Concessionaire shall cause MFG to submit proposed types of food and beverages to be prepared and served at each of the Restaurants and pricing for the approval of the City Manager or his or her designee, and, as approved, shall be attached hereto as ***Exhibit 3.2.3***. Any amendments to ***Exhibit 3.2.3***, whether as to type of food and beverages to be sold, or as to changes in prices for same, must be approved, in writing, by the City Manager or his/her designee prior to such changes being implemented within the Concession Area (and, if approved, an updated ***Exhibit 3.2.2*** will be incorporated into this Agreement).

3.2.4 Concessionaire shall be permitted to deliver food and beverages from the Restaurants Concession Areas to the Beachfront Area and Pool Area and to "offsite" customers and, in connection therewith, to utilize an internet based application or other form of electronic software program or any other platform or means of communication (e.g., website, third-party food delivery apps, telephone orders, etc.) (collectively, the "F&B Apps") provided, that, (i) the only food and beverage menu items offered on the F&B Apps are those permitted to be provided by Concessionaire under this Agreement within the applicable Concession Areas;

(ii) no items whatsoever, other than those provided for under this Agreement, shall be offered on the F&B Apps within the Concession Areas; and (iii) the City shall be entitled to receive its percentage of Gross Receipts in accordance with **Section 4** for any and all additional revenue received by Concessionaire (or Restaurant Operator) in conjunction with use of the F&B Apps whether such orders are filled from or at the Concession Area or elsewhere .

3.2.5 All food and beverages sold within the Property will be properly prepared and served in compliance with all applicable health and sanitary standards, laws and regulations and the Restaurants shall be operated in compliance with all Requirements. Concessionaire shall use products to serve food and beverage that are environmentally friendly. The use of expanded polystyrene containers or other food service articles and plastic (or other non-biodegradable) straws is strictly prohibited.

3.2.6 The quality of food and beverages contemplated in **Subsection 3.2.1**, and food and beverage service, will be first-rate and comparable to similar food and beverage operations at public beach concessions in other world class beach resorts on par with the City of Miami Beach.

3.2.7 All facilities within the Concession Area where the preparation, storage, cooking, heating and/or packaging of food occurs shall be properly cleaned and maintained in accordance with all applicable health and sanitary standards, laws and regulations and any other applicable Requirements. At least one supervisory employee at each Restaurant during each shift must possess a Food Service Management Certification issued by a County Public Health Department in Florida. In addition, each Restaurant or other food and beverage dispensing facility within the Concession Area, if any, must be licensed by the Florida Department of Business Regulation, Division of Hotels and Restaurants, and as may further be required by State law and/or by corresponding agencies.

3.2.8 The City acknowledges that the Restaurant Operations will be delegated by Concessionaire to the Restaurant Subconcessionaires, provided that no such delegation will act to release Concessionaire from its obligations hereunder and Concessionaire shall remain responsible for compliance with all provisions of this Agreement.

3.2.9 Concessionaire shall maintain (or shall cause any MFG and/or any approved Replacement Restaurant Subconcessionaire to maintain) the following minimum insurance coverage (i) Comprehensive General Liability in limits of not less than $1,000,000.00 per occurrence and $5,000,000 general aggregate; (ii) Workers' Compensation in statutory limits under Florida law and Employer Liability Insurance for bodily injury or disease with limits of not less than $1,000,000/$1,000,000/$1,000,000; and (iii) Automobile Liability Insurance covering any automobile, if Concessionaire (or MFG and/or other approved Replacement Restaurant Subconcessionaire) has no owned automobiles, then coverage for hired and non-owned automobiles, with limits of not less than $1,000,000 combined per accident for bodily injury and property damage; (iv) Liquor Liability Insurance on an occurrence basis, including property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence; (iv) Crime/theft policy in limits of not less than $300,000.00 per

occurrence; (v) Damage to Premises Rented to You insurance with I limits of not less than $1,000,000.00; (vi) Business Interruption Insurance effective no later than the date on which the Restaurant Operations commence to include so-called "Rent Insurance" on an "All Risk" basis in an amount not less than any minimum Subconcession fee payable to Concessionaire and otherwise consistent with the requirements set forth in ***Exhibit 14.3***; and (vii) an umbrella policy of not less than $5,000,000.00 per occurrence, with policies issued by a carrier with a current A.M. Best Company rating of at least A: VII, on an "occurrence" basis (other than Workers' Compensation) and maintained with insurers authorized to do business in the State of Florida and shall be endorsed to list the City as an additional insured. Copies of certificates of insurance and the Additional Insured Endorsement shall be provided to the City prior to commencing operations. Such policies shall comply with the "General Provisions Applicable to All Policies" set forth in Exhibit 14. In addition, the City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Concessionaire shall maintain all necessary licenses as may be required by Federal, state and/or local laws to legally perform the Restaurant Operations and Café Operations.

3.3 Kids Club

3.3.1 Concessionaire shall enter into a subcontract with Nannywisdom, LLC, d/b/a itavi®, a Florida limited liability company ("Itavi®"), with respect to the Kids Club Operations in accordance with this Section 3.3 and other provisions of this Agreement relating to the Kids Club Operations at the Property. The terms of the subcontract with Itavi® or any replacement providing similar childcare services at the Concession Area shall include waivers of recovery against the City and indemnification in favor of the City substantially as set forth in paragraphs 2 and 3 of ***Exhibit 7.6***. The Kids Club Operations shall be a high-end quality children's center operated in accordance with the itavi® Method and will provide free childcare services, subject to availability, for the children or legal wards of patrons of the Restaurants, Health and Wellness Center and/or Retail Pavilion while patrons are physically present in the Restaurants, Health and Wellness Center and/or Retail Pavilion. The Kids Club shall be a dedicated, secure, indoor location inside the building on the Property in the area delineated by the Site Plan and will include a secure, private bathroom for children from the approximate ages of 4 to 12 years of age (potty trained only) and furnished with age-appropriate furniture. Subject to any necessary suspension or reduction of operations due to a Force Majeure Event, the Kids Club shall be open, at a minimum, during the operating hours of the Concession Operations on all weekends, federal holidays and all days on which public schools in Miami-Dade County are closed (including without limitation teacher work days, winter break and summer break) and staffed with at least three (3) childcare professionals to ensure a ratio not to exceed 8:1 children per childcare professional, with one of such childcare professional designated as the Kids Club Supervisor to oversee management and daily operations. The itavi® Subcontract shall stipulate that itavi® shall provide duly qualified and licensed childcare professionals with the following qualifications: (a) all childcare professionals shall be at least eighteen (18) years of age and be certified in First Aid and CPR; (b) itavi® shall have conducted appropriate background screenings and reference checks on all its child care providers, including, without limitation, criminal background checks and verification of their motor vehicle license (through

Checkr or such other comparable company that shall be used from time to time); (c) all Kids Club patrons who book the childcare services will be required to complete an intake form and waiver form to disclose the physical and medical needs of the child to be cared for; (d) itavi® shall provide an online booking service for patrons; (e) childcare professionals at the Kids Club shall wear uniform shirts with the itavi® logo; (f) in performing its duties under the Subcontract, itavi® shall comply with all applicable Requirements; (g) itavi® shall be responsible for hiring, terminating and making all other personnel decisions regarding those persons who will be working on itavi's® behalf to provide the Services; (h) itavi® childcare professionals shall not take the child(ren) off the Kids Club premises nor to the Beachfront Area or Pool Area; and (i) itavi® shall maintain all necessary licenses as required by Federal, state and/or local laws to legally perform the childcare services to be offered at the Kids Club pursuant to the Subcontract.

3.3.2 itavi® shall maintain insurance during the term of the Subcontract provided for the following minimum insurance coverage: (i) Comprehensive General Liability in limits of not less than $1,000,000.00 per occurrence and $3,000,000 general aggregate; (ii) Workers' Compensation in statutory limits under Florida law; (iii) Professional Liability coverage in limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate and Employer Liability Insurance for bodily injury or disease with limits of not less than $1,000,000/$1,000,000/$1,000,000; (iv) Crime/theft policy in limits of not less than $300,000.00 per occurrence; (v) Sexual and/or Physical Abuse coverage in limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate; (vi) Business Interruption Insurance effective no later than the date on which the Kids Club Operations commence to include so-called "Rent Insurance" on an "All Risk" basis in an amount not less than any minimum Subconcession fee payable to Concessionaire and otherwise consistent with the requirements set forth in ***Exhibit 14.3*** and (vii) an umbrella policy of not less than $5,000,000.00 per occurrence, with policies issued by a carrier with a current A.M. Best Company rating of at least A: VII, on an "occurrence" basis (other than Workers' Compensation) and maintained with insurers authorized to do business in the State of Florida and shall be endorsed to list the Concessionaire and the City as additional insureds, with itavi® delivering certificates of insurance and the Additional Insured Endorsements to Concessionaire and the City prior to commencing services and annually thereafter. Such policies shall comply with the "General Provisions Applicable to All Policies" set forth in Exhibit 14. In addition, the City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.3.3 In the event of a termination or expiration of the itavi® Subcontract and in the event that Concessionaire desires to subcontract with another entity (the "Replacement Kids Club Subconcessionaire") to provide Kid Club services, in the manner and to the extent contemplated under this **Subsection 3.3**, such new request shall be subject to the Concessionaire submitting information with respect to such Replacement Kids Club Subconcessionaire for the City Manager's or his/her designee's prior review and written approval. Notwithstanding the approval of itavi® or a Replacement Kids Club Subconcessionaire, Concessionaire remains directly responsible to the City for payment of the PG upon the Gross Receipts

from the Subconcessionaire's Operations even if the Subconcessionaire fails to make payment of any amount due to Concessionaire under its Subcontract.

3.4 Health and Wellness Center

3.4.1 Concessionaire shall have the right to operate, or subcontract for the operation of the Wellness Operations, which shall consist of a high-end quality health and wellness facility to be located in the area delineated on the Site Plan. Concessionaire shall provide an online booking service for patrons. Concessionaire in performing its duties hereunder shall comply with all applicable Requirements. Concessionaire shall be responsible for hiring, terminating and making all other personnel decisions regarding the Health and Wellness Center personnel except to the extent undertaken by the Health and Wellness Subconcessionaire (as hereafter defined). In the event that Concessionaire desires to subcontract with another entity (the "Health and Wellness Subconcessionaire") to provide the Wellness Operations, such request shall be subject to the Concessionaire submitting information with respect to such Subconcessionaire for the City Manager's or his/her designee's prior review and written approval. The terms of the subcontract with any Health and Wellness Subconcessionaire shall include waivers of recovery against the City and indemnification in favor of the City substantially as set forth in paragraphs 2 and 3 of ***Exhibit 7.6***. Notwithstanding the approval of any Health and Wellness Subconcessionaire, Concessionaire remains directly responsible to the City for payment of the PG upon the Gross Receipts from the Subconcessionaire's Operations even if the Subconcessionaire fails to make payment of any amount due to Concessionaire under its Subcontract.

3.4.2 Concessionaire shall maintain (or shall cause any approved Subconcessionaire to maintain) the following minimum insurance coverage (i) Comprehensive General Liability in limits of not less than $1,000,000.00 per occurrence and $5,000,000 general aggregate; (ii) Workers' Compensation in statutory limits under Florida law and Employer Liability Insurance for bodily injury or disease with limits of not less than$1,000,000/$1,000,000/$1,000,000; and (iii) Professional Liability coverage in limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate; (iv) Crime/theft policy in limits of not less than $300,000.00 per occurrence; (v) Sexual and/or Physical Abuse coverage in limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate; (vi) Business Interruption Insurance effective no later than the date on which the Wellness Operations commence to include so-called "Rent Insurance" on an "All Risk" basis in an amount not less than any minimum Subconcession fee payable to Concessionaire and otherwise consistent with the requirements set forth in Exhibit 14.3; and (vii) an umbrella policy of not less than $5,000,000.00 per occurrence, with policies issued by a carrier with a current A.M. Best Company rating of at least A: VII, on an "occurrence" basis (other than Workers' Compensation) and maintained with insurers authorized to do business in the State of Florida and shall be endorsed to list the City as an additional insured. Copies of certificates of insurance and the Additional Insured Endorsement shall be provided to the City prior to commencing services. Concessionaire shall maintain all necessary licenses as may be required by Federal, state and/or local laws to legally perform the Wellness Operations. Such policies shall comply with the "General Provisions

Applicable to All Policies" set forth in Exhibit 14. In addition, the City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.4.3. By or before April 1, 2026, Concessionaire shall submit all proposed patron rates for the Health and Wellness Center services to be provided to the City Manager for approval by the City Manager or his or her designee and, as approved, shall be attached hereto as ***Exhibit 3.4.3***. Any amendments to ***Exhibit 3.4.3*** must be approved, in writing, by the City Manager or his/her designee prior to such changes being implemented within the Health and Wellness Center Operations (and if approved, an updated ***Exhibit 3.4.3*** will be incorporated into this Agreement).

3.5 Sale of Beach-Related Sundries and Skin Care Products by Concessionaire.

3.5.1 Subject to the terms of this **Section 3.5**, Concessionaire shall have the right to sell beach-related sundries and skin care products (such as lotions, oils and other skin care products) in the Beachfront Area and Pool Area, subject to compliance with all applicable Requirements. On or before April 1, 2026, Concessionaire shall submit a schedule reflecting all proposed beach-related sundries and skin care products to be sold and the pricing therefor to the City Manager for approval by the City Manager or his or her designee and, as approved, shall be attached hereto as ***Exhibit 3.5.1***(collectively, the "Beach-Related Sundries"). Any amendments to ***Exhibit 3.5.1***, whether as to changes and/or additions of items to be offered for sale, or in the respective price ranges for same, must be approved in writing by the City Manager or his/her designee, prior to such changes and/or additions being implemented (and, if approved, an updated ***Exhibit 3.5.1*** will be incorporated into this Agreement).

3.5.2 Notwithstanding the City's approval of the sale of Beach-Related Sundries and Skin Care Products by Concessionaire on the Property pursuant to this Subsection, the City Manager may subsequently elect, in his/her sole option and discretion (and with or without cause), to rescind such approval, upon ninety (90) days prior written notice to Concessionaire, and without any liability to the City under this Agreement.

3.5.3 Concessionaire shall procure and maintain the insurance policies required pursuant to Section 14 (Exhibit 14) to cover exposures associated with the sale of Beach-Related Sundries and other Incidental Concessions.

3.6 Retail Pavilion

3.6.1 Concessionaire shall have the right to operate the Retail Operations in a retail pavilion (the "Retail Pavilion") to be located in the area of the Concession Area delineated on the Site Plan, consisting of, among other things, a collection of retail shops which may include, but not be limited to, art galleries comprised of unique, emerging local talent side by side with established artists, artisanal food shops, fashion and design shops and floral shops. Concessionaire shall not use or occupy any portion of the Retail Pavilion or any other area within the Concession Area, and neither permit nor suffer the Retail Pavilion or other area within the Concession Area to be used by any subconcessionaire for any Prohibited Uses as defined in Subsection 3.8 of this Agreement. Concessionaire in performing its duties hereunder shall comply with all applicable Requirements and maintain (or cause subconcessionaires to maintain) all necessary licenses. Concessionaire shall be responsible for hiring, terminating and making all other personnel

decisions regarding the Retail Pavilion personnel except to the extent undertaken by the Retail Pavilion Subconcessionaire (as hereafter defined). In the event that Concessionaire desires to subcontract with another entity (a "Retail Pavilion Subconcessionaire") to provide services or sell goods within any part of the Retail Pavilion, such request shall be subject to the Concessionaire submitting information with respect to such Subconcessionaire for the City Manager's or his/her designee's prior review and written approval of such Subconcessionaire by the City Manager or his/her designee. Notwithstanding the approval of any Retail Pavilion Subconcessionaire, Concessionaire remains directly responsible to the City for payment of the PG upon the Gross Receipts from the Subconcessionaire's Operations even if the Subconcessionaire fails to make payment of any amount due to Concessionaire under its Subcontract.

3.6.2 Concessionaire shall maintain (or shall cause any approved Subconcessionaire to maintain) the following minimum insurance coverage: (i) Comprehensive General Liability in limits of not less than $1,000,000.00 per occurrence and $5,000,000 general aggregate; (ii) Workers' Compensation in statutory limits under Florida law and Employer Liability Insurance for bodily injury or disease with limits of not less than $500,000/$500,000/$500,000; and (iii) Professional Liability coverage in limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate; (iv) Crime/theft policy in limits of not less than $300,000.00 per occurrence; (v) Business Interruption Insurance effective no later than the date on which the Retail Operations commence to include so-called "Rent Insurance" on an "All Risk" basis in an amount not less than any minimum Subconcession fee payable to Concessionaire and otherwise consistent with the requirements set forth in Exhibit 14.3; and (vi) an umbrella policy of not less than $5,000,000.00 per occurrence, with policies issued by a carrier with a current A.M. Best Company rating of at least A: VII, on an "occurrence" basis (other than Workers' Compensation) and maintained with insurers authorized to do business in the State of Florida and shall be endorsed to list the City as an additional insured. Copies of certificates of insurance and the Additional Insured Endorsement shall be provided to the City prior to commencing services. Concessionaire shall maintain (and cause any Subconcessionaires to maintain) all necessary licenses as may be required by Federal, state and/or local laws to legally operate the Retail Pavilion as contemplated by this Agreement. Such policies shall comply with the "General Provisions Applicable to All Policies" set forth in Exhibit 14. In addition, the City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.6.3 All use of space and goods to be sold at the Retail Pavilion are subject to the prior approval of the City Manager or his or her designee. On or before April 1, 2026, Concessionaire shall submit all proposed rates for subconcessions for use of space and cost of goods at the Retail Pavilion to the City Manager for approval by the City Manager or his or her designee and, as approved, shall be attached hereto as ***Exhibit 3.6.2***. Any amendments to ***Exhibit 3.6.2*** must be approved, in writing, by the City Manager or his/her designee prior to such changes being implemented (and, if approved, an updated ***Exhibit 3.6.2*** will be incorporated into this Agreement).

3.7 Concession Facilities and Concession Storage Facilities

3.7.1 The design, materials, color, etc. of Concessionaire's dispensing facilities and storage facilities within the Beachfront Area must be approved by the City's Planning Department and receive design review approval from the appropriate City Land Use

Board(s) prior to the Occupancy Date. The location of the dispensing facilities and storage facilities shall be included in ***Exhibit 3.1.5***. Concessionaire shall not deviate from or change the type, design, and/or location of its proposed dispensing or storage facilities without the prior written consent of the City Manager or his/her designee.

3.7.2 On or before April 1, 2024, Concessionaire shall submit a written plan for storage and removal of Concessionaire's Beach and Pool Equipment and dispensing facilities , for the approval of the City Manager or his or her designee, and, as approved, shall be attached hereto as ***Exhibit 3.7.2***, which plan shall include the use of any storage facilities contemplated in **Subsection 3.7.1** above. Any change thereto shall be subject to approval of the City Manager or his/her designee.

3.7.3 In the event that, at any time during the Term, the State of Florida determines that Concessionaire's dispensing and storage facilities (for purposes of this subsection, the "facilities") do not comply with State law, then Concessionaire shall, at its sole cost and responsibility, immediately take such actions, as reasonably necessary, to bring same into compliance, including, without limitation, revising its storage plan and/or either altering or removing the non-complying facilities from the Beachfront Area. Concessionaire herein further acknowledges that it shall indemnity and hold the City harmless for any expenses and/or other damages incurred as a result of Concessionaire's non-compliance with State requirements pursuant to in this subsection and Concessionaire shall be solely responsible for any cost or other liabilities incurred (a) by the City as a result of Concessionaire's noncompliance or (b) by Concessionaire as a result of removal of the facilities or, in the alternative, bringing such facilities into compliance with State law.

3.8 Prohibited Uses. Notwithstanding any other provision of this Agreement, Concessionaire shall not use the Concession Area nor permit any part thereof to be used for any of the following purposes ("Prohibited Uses"): (a) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Property, and then only for thirty (30) days after the date of any such damage; (b) as an auction or flea market; (c) any business in which Concessionaire is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (d) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (e) coinbox entertainment (pinball, video games, moving pictures operated by coins); (f) casino gambling or games of change or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (g) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or for any purpose or in any way in violation of Concessionaire's Certificate(s) of Occupancy (or other similar approvals of applicable governmental authorities); (h) movie theatre; (i) medical facilities and offices; (j) check cashing facilities; (k) pawn shops; (l) the sale of firearms; (m) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (m) places of worship; (n) political offices; (o) military recruiting; (p) consular, legation or any other offices of foreign governments; (q) tire sales; (r) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (s) offices for the practice of veterinary medicine; (t) the sale of major appliances as a primary business; (u) housing or sleeping quarters; (v) grocery stores (other than specialty gourmet shops); (w) second hand stores; and/or (x) in any manner that will violate any Certificate of Occupancy or Certificate of Use for the Concession Area or any portion thereof, or which will violate any Requirements applicable

to the Concession Area. Immediately upon its discovery of any Prohibited Use by, through or under Concessionaire, Concessionaire shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use including, if necessary, the removal from the Concession Area of any subconcessionaires, licensees, or invitees, subject to applicable Requirements.

3.9 Emergency Liaison; Hurricane Evacuation Plan.

Concessionaire shall assign an employee and a backup employee to act as an emergency liaison (each, an "Emergency Liaison") with the City. Upon City's request, a Liaison will attend meetings held by the City in connection with emergency situations, such as extreme weather events, terrorist acts, etc. The Emergency Liaison will serve as the point of contact during any emergency crisis. Concessionaire agrees that fifty percent (50%) of all its storage and dispensing facilities, Beach and Pool Equipment and any other equipment and facilities used in the Concession Operations will be removed from the beachfront immediately within eight (8) hours of the issuance of a Tropical Storm or Hurricane Watch by the Miami-Dade County Office of Emergency Management, and stored in accordance with **Subsection 3.7.2** above, and the remaining fifty percent (50%) of the above-referenced facilities and equipment will be removed from the beachfront immediately within eight (8) hours of the issuance of a Tropical Storm or Hurricane Warning by the Miami-Dade County Office of Emergency Management, and stored in with **Subsection 3.7.2** above. On or before April 1, 2024, Concessionaire shall submit its hurricane preparedness/evacuation plan, which shall include the location, and proof of ownership and/or control by Concessionaire (either through a deed, lease or other form reasonably satisfactory to the City Manager or his designee), of its proposed hurricane storage facilities, for approval by the City Manager or his or her designee and, as approved, shall be attached hereto as ***Exhibit 3.9*** to this Agreement. Any amendments to Exhibit 3.9 must be approved, in writing, by the City Manager or his/her designee (and if approved, an updated Exhibit 3.9 will be incorporated into this Agreement). In the event that the City seeks reimbursement from the Federal Emergency Management Agency ("FEMA") and/or any comparable federal or state agency for the costs and expenses involved in connection with hurricane preparedness and/or restoration of the Beachfront Area, the City shall provide written notice thereof to Concessionaire and agrees to the extent permitted by law to include those costs and expenses ("Concessionaire's losses") incurred by Concessionaire as well, if requested by Concessionaire. Concessionaire agrees to provide such documentation to the City as may be required by the City, FEMA and/or any comparable federal or state agency to document Concessionaire's losses and to seek such reimbursement (the "Concessionaire Reimbursement"). In the event of any such reimbursement to the City with respect to the Concessionaire Reimbursement, the City shall grant to Concessionaire a credit against the next MG or PG, as the case may be, due and payable under **Section 4** in an amount equal to the amount of Concessionaire Reimbursement received by the City. The foregoing shall not create an agency relationship between the City and Concessionaire and shall not create an obligation by the City to pursue further any Concessionaire Reimbursement not approved or paid by FEMA.

3.10 Sea Turtles.

Concessionaire agrees and understands that the State of Florida has advised that, in order to place facilities and/or equipment on the beach, surveys for marine turtle nesting activity must be ongoing or beginning April 1st – October 31st, of each year. The Beachfront Area

is currently surveyed by the Beach Maintenance Division of the Miami-Dade County Parks and Recreation Department. Accordingly, as to the Beachfront Area, Concessionaire agrees as follows:

a. It is the responsibility of the Concessionaire to abide by any order issued by the State of Florida and/or cooperate with Miami-Dade County to ensure that nesting surveys may be conducted in accordance with the conditions set forth by the State.
b. In the event an unmarked marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Florida Marine Patrol (1-800-DIAL-FMP) shall be notified immediately such that appropriate conservation measures may be taken.
c. Except for the headlights required to be used by Concessionaire pursuant to **Subsection 10.9**, no temporary lighting associated with the concession will be permitted at any time during the marine turtle nesting season and no permanent lighting is authorized.
d. The placement and removal of facilities and equipment on the beach seaward of 230 feet from the high water line shall be conducted during daylight hours (Set-Up to take place daily after inspection of the particular Concession Area by the Miami-Dade Sea Turtle Conservation representative each morning and removal within one (1) hour before sunset) and shall not occur in any location prior to completion of the necessary marine turtle protection measures.
e. The Beachfront Area seaward of the 230-foot setback from the high water line should be cleared of all furniture and equipment, except lifeguard equipment, at nights during the turtle-nesting season.
f. Disturbing the existing beach (other than as contemplated by this Agreement), dune topography and vegetation is prohibited.

3.11 City Business Tax Receipts.

Concessionaire and Subconcessionaires shall obtain, at their respective sole cost and expense, any Business Tax Receipts (BTR's) required by City law, as amended from time to time, for all proposed uses, as contemplated in **Section 3** of this Agreement.

3.12 Value-Added Enhancements.

Concessionaire agrees to provide the Value-Added Enhancements listed in ***Exhibit 3.12*** attached hereto and made a part hereof throughout the Term.

3.13 Affiliates.

Concessionaire shall have the right to subcontract the Concession Operations to be provided in the Concession Areas to any wholly-owned Affiliate without the approval of the City Manager or his/her designee, effective upon prior written notice to the City, provided, that, Concessionaire shall remain liable to pay the Concession Fees (as defined in Section 4 below) to the City.

3.14 Sponsorships. Subject to the provisions and restrictions set forth below in this Subsection 3.14 and Subsection 21.5, Concessionaire shall have the right to enter into sponsorship agreements relating to the various Concession Operations and sale of goods on the Property including, but not limited to, preferred providers, promotional opportunities, logo placement and marketing materials ("Sponsorships"). Any such Sponsorship request shall be subject to the Concessionaire submitting information with respect to such sponsor for

the City Manager's or his/her designee's prior review and written approval and including any proposed contract or agreement which shall also be subject to the prior written approval of the City Manager or his/her designee. In no event will any Sponsorship violate any intellectual property rights of the City nor will Concessionaire enter into any Sponsorships with competitors of any existing City sponsor or any future City sponsor of which Concessionaire is notified by the City. Notwithstanding the foregoing or anything in this Agreement to the contrary, Concessionaire acknowledges and agrees that the City has existing contracts with PepsiCo Beverage Sales, LLC and "Red Bull" beverage companies which grant exclusive pouring rights at City facilities, including the Concession Area, in the following beverage categories: Pepsi Cola (soda, water, juice, isotonics, protein, kombucha, iced tea, iced coffee, etc., but excluding hot coffee (dispensed), hot tea and hot cocoa) and (Red Bull) energy drinks. Accordingly, (i) Concessionaire shall observe (and shall cause any subconcessionaires and/or subcontractors to observe) such exclusive pouring rights and (ii) Concessionaire shall not secure sponsorships in the soda, water, juice, isotonics, protein, kombucha, iced tea, iced coffee, etc., but excluding hot coffee (dispensed), hot tea and hot cocoa) or energy drink categories. Further, Concessionaire may not secure sponsorships involving the following categories: tobacco, vaping, firearms, intimate apparel, religious or political, gambling, prescription medication, intimate personal products (including male enhancement or feminine hygiene products) and any other category that is now or hereafter prohibited by federal law, state law, the Miami-Dade County Code or the City Code.

SECTION 4. CONCESSION FEES.

In consideration of the grant of the concession to Concessionaire, Concessionaire agrees to pay to the City the following (collectively, the "Concession Fees"):

4.1 Upfront Payment.

Concessionaire shall pay to the City a total of Four Million and No/100 Dollars ($4,000,000.00) (the "Upfront Payment"), payable in four (4) equal non-refundable installments of One Million and No/100 Dollars $1,000,000.00 due on (a) the Effective Date hereof, (b) on or before January 10, 2025, (c) on or before January 10, 2026, and (d) on or before January 10, 2027. The Upfront Payment shall be credited to the MG payments due in respect of the first Agreement Year pursuant to Section 4.2.

4.2 Minimum Guarantee (MG).

In consideration of the City's execution of this Agreement and granting the rights provided herein, but subject to reduction as may (only) expressly be provided in this Agreement, and after applying the credit for the Upfront Payment set forth in Section 4.1 above, commencing from and after the Commencement Date, Concessionaire shall pay to the City a Minimum Guaranteed Annual Concession Fee ("MG") in the total amount of Four Million and No/100 Dollars ($4,000,000.00) per Agreement year. The MG shall be increased annually commencing on the first anniversary of the Commencement Date and each anniversary of the Commencement Date thereafter by three percent (3%). In addition, at the commencement of the sixth (6th) Agreement Year, the annual MG shall be adjusted to the greater of (a) the amount of the MG during the fifth Agreement Year increased by three percent (3%) or (b) eighty percent (80%) of the average of the actual Concession Fees paid during the first five (5) Agreement Years. For the second (2nd) through ninth (9th) Agreement Years, the MG shall be paid in two equal installments with fifty percent (50%) of the MG for the applicable Agreement Year payable at the commencement of such Agreement Year and the remaining fifty percent (50%) of the MG for such Agreement Year payable at the commencement of the seventh (7th) month of such Agreement Year. By way of example, if the Commencement Date is August 1, 2027, then with respect to the 2nd Agreement Year, $2,060,000 (or fifty percent (50%) of $4,120,000) will be payable by or before August 1, 2028 and an additional $2,060,000 will be payable by or before February 1, 2029.

4.3 Percentage of Gross (PG).

For each Agreement Year during the Term, Concessionaire shall pay to the City ten percent (10%) of Gross Receipts (as hereinafter defined) in excess of the amount of the then current MG (the "Percentage of Gross" or "PG"), payable no later than the day that is one hundred twenty (120) days following the last day of such Agreement Year. By way of example, if the Commencement Date is August 1, 2027, then the PG in respect of the first Agreement Year shall be due and payable by or before November 28, 2028. In addition, on or before the date that is one hundred twenty (120) days after the end of each Agreement Year, Concessionaire shall pay the City an additional five percent (5%) of the first Five Million Dollars ($5,000,000) of Gross Receipts in excess of $65,000,000 (the "Additional PG"). For example, if the Gross Receipts for a particular Agreement Year is $72,000,000, Concessionaire will pay the City a total of $7,200,000 in MG and PG, and will pay the City the Additional PG in the amount of $250,000 on or before the date that is ninety (90) days following the last day of such Agreement Year.

4.4 Gross Receipts.

The term "Gross Receipts" as used herein shall mean any and all receipts, revenues and income of any nature derived directly or indirectly from all business conducted at, upon or from the Concession Area (including all Concession Operations) by Concessionaire, all Subconcessionaires, licensees, assignees and any and all others, whether evidenced by cash, check, credit, charge account, exchange or otherwise, including, without limitation, receipts from the sale of food, beverage, alcoholic beverages, services, merchandise, equipment rental and parking, so-called "location fees," sponsorship or advertising fees or other consideration, from vending or other machines, and from orders for any of the

foregoing taken at the Concession Area or through any website, application or other interface (whether such orders are filled from or at the Concession Area or elsewhere). The term "Gross Receipts" shall also include any Displacement Fee or Alternative Consideration. The term "Gross Receipts" shall exclude: (a) amounts of any Federal, State, or City sales tax, use tax, excise tax, resort tax or other tax, governmental imposition, assessment, charge or expense of any kind, collected from customers, provided that the amount thereof is added to the selling price and remitted to the taxing or other governmental authority; (b) all credits and refunds given or made to customers for returns of merchandise; (c) all sums received in settlement for lost or damaged merchandise; (d) sales of machinery, equipment or trade fixtures after use thereof in the conduct of the Operations and not made to customers in the ordinary course of business; (e) the value of meal discounts to Concessionaire's employees, not to exceed two percent (2%) of Gross Receipts attributable to Restaurant Operations per year; and (f) as to the Restaurant Operations, Beachfront Operations, Pool Operations and Wellness Operations, service charges paid by customers to the extent paid to employees as tips and gratuities.

4.5 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid within five (5) days of the date provided for in this Agreement shall be subject to a late charge of Fifty and 00/100 ($50.00), plus interest at the rate of eighteen percent (18%) per annum (but not more than the highest rate allowable by law), from the due date of payment until such time as payment is actually received by the City.

4.6 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax. Notwithstanding the foregoing, in the event the Concessionaire obtains an opinion from the Florida Department of Revenue that payments made to a municipality are not subject to sales tax, then Concessionaire shall not be required to pay sales tax.

4.7 Beach Operations Opening.

Immediately following expiration of the Existing Concession Area Agreements, and subject to satisfaction of the Occupancy Conditions, Concessionaire shall have the right, in its discretion, to commence Beachfront Operations. If Concessionaire so elects, the Term and Concessionaire's obligation to pay the Concession Fees shall commence on the date such Beachfront Operations commence.

SECTION 5. RECORDS, ACCOUNTS, STATEMENTS AND AUDITS.

5.1 Concessionaire shall keep at the Concession Area, or such other place approved by City, true, accurate, and complete records and accounts of all sales, gross sales, subcontract payments, and business being transacted upon or from the Concession Area maintained in accordance with generally accepted accounting principles and shall give City or City's representative access during reasonable business hours, with advance notice, to examine

and audit such records and accounts. It is acknowledged that Concessionaire will implement an electronic and primarily cashless Point of Sale system (the "POS System") to provide greater control and monitoring through the implementation of the SQUARE® POS software licensed by Concessionaire or such other similar POS system that the Concessionaire shall use from time to time. Subject to such reasonable system security rules that Concessionaire may implement from time to time, the Concessionaire shall provide access to limited number of City employees from the Office of Asset Management (the current administrator of this Agreement) (the "POS Employees") and log-in credentials for the POS System so that they will have access for purposes of monitoring Concessionaire's performance. Concessionaire shall maintain all records and accounts (and shall require each Subconcessionaire to so maintain all records and accounts) for a period of three (3) years following expiration (or other termination) of this Agreement (regardless of whether such termination results from the expiration of the Term or for any other reason).

5.2 Within fifteen (15) days after each month of the Term hereof, Concessionaire shall deliver to City a written monthly statement of the Gross Receipts for such month certified by Concessionaire to be true, accurate, and complete. Any PG payable in respect of such month shall accompany such monthly statement.

5.3 Within ninety (90) days after each Agreement year, Concessionaire shall deliver to City a written annual statement of the Gross Receipts for such Agreement Year. Said statement shall be certified as true, accurate and complete by Concessionaire, by and through a duly authorized officer of Concessionaire. The City's auditor or his/her designee shall have the right, during regular business hours and upon the City's written request to Concessionaire to audit, inspect, examine and copy the Concessionaire 's fiscal and financial records, books, ledgers, statements, reports, tax returns and documents relating to this Agreement and the Concessionaire 's revenues thereunder through the Term of this Agreement and for three (3) years following its expiration or cancellation. The Concessionaire agrees to have such audit(s) conducted at the Concession Area or at such other locations within the City of Miami Beach, Florida as are mutually agreeable to the parties.

SECTION 6. TAXES, ASSESSMENTS, AND UTILITIES.

6.1 Concessionaire agrees to, and shall pay before delinquency, all taxes (including but not limited to resort taxes, ad valorem, sales and use taxes, as applicable) and assessments of any kind assessed or levied upon the Concession Area and any improvements thereon, including without limitation the Concession Area Structures, along with all taxes and assessments of any kind levied by reason of any business or activities conducted on the Concession Area by Concessionaire or any Subconcessionaire (collectively, "Impositions"). Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

6.2. Concessionaire shall pay for any fees imposed by law for licenses or permits for any business(es) or activities of Concessionaire conducted in the Concession Areas.

6.3 Concessionaire shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the Operations contemplated herein (including, but not limited to, water, electricity, gas, heating, cooling, sewer, telephone, ice machine, trash collection, etc.).

6.4 Notwithstanding **Subsection 6.1**, historically no ad valorem taxes have been assessed by the Miami-Dade County Tax Appraiser with regard to uses that are for public purposes and, accordingly, certain areas within the Concession Area may not be subject to ad valorem tax. If, however, such taxes are validly assessed at any time during the Term, the Concessionaire shall be solely liable for the payment of same.

SECTION 7. CONCESSIONAIRE IMPROVEMENTS.

7.1 Plans and Specifications.

7.1.1. Concessionaire shall retain the services of such architecture, engineering and design firms for the Work as approved by the City Manager or his/her designee pursuant to this Agreement. On or before April 1, 2024, Concessionaire shall submit to the City (acting in its proprietary capacity as owner of the Concession Area) all of the preliminary plans and specifications for the renovations and improvements to be made to the Property, which shall substantially conform to the conceptual designs presented by Concessionaire with its RFP submission (the "RFP Conceptual Designs") and shall include a site plan and all items constituting architectural plans and exhibits and landscape plans and exhibits that are required by the City Land Development Boards to be included in the application for Project Approvals (the "Preliminary Plans and Specifications"). The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications solely for substantial conformity with the RFP Conceptual Designs. The City Manager shall not unreasonably withhold or delay his or her approval if the Preliminary Plans and Specifications for substantially conform to the Project Concept Plan for such Phase; it being agreed however, that the City's failure to so notify Owner of its disapproval within ten (10) Business Days after a second written request bearing the legend specified in Subsection 26.13 of this Agreement shall be deemed to constitute the City's conclusive approval of such Preliminary Plans and Specifications (subject to Concessionaire's compliance with Subsection 26.13 of this Agreement). If the City Manager disapproves the Preliminary Plans and Specifications, then Owner shall within thirty (30) days after such disapproval, submit a revised modification to the Preliminary Plans and Specifications that substantially conform to the Project Concept Plan to the City Manager pursuant to the foregoing process until such Preliminary Plans and Specifications for such Phase have been approved by the City Manager.

7.1.2 Promptly following the City Manager's approval of the Preliminary Plans and Specifications for the Work in accordance with Subsection 7.1.1 above, Concessionaire shall submit same to the applicable City Land Development Boards and deliver a copy of such submittal to the City. Thereafter, Concessionaire shall use diligent, good faith efforts to obtain all Project Approvals on or before July 1, 2024. The City and Concessionaire acknowledge and agree that the City Land Development Boards and/or any other applicable Governmental Authority may require revisions to the Preliminary Plans and Specifications for the Work as a condition to the issuance of the Project Approvals; provided, however, that any revisions that will cause the Preliminary Plans and

Specifications to substantially deviate from the RFP Concept Plans shall be subject to approval by the City Manager in his or her reasonable discretion. The Preliminary Plans and Specifications for each Phase of the Project, as revised to conform to conditions to the issuance of the Project Approvals and, if applicable, any such revisions have been approved by the City Manager to the extent required herein, are referred to in this Agreement as the "Approved Preliminary Plans".

7.1.3 Upon receipt of the Project Approvals for the Work, Concessionaire shall prepare the Plans and Specifications for construction of the Work, substantially consistent with the Approved Preliminary Plans, for review by the City (acting in its proprietary capacity as owner of the Concession Area). The City Manager shall have twenty (20) Business Days to review the Plans and Specifications for substantial consistency with the Approved Preliminary Plans; it being agreed however, that the City's failure to so notify Concessionaire of its disapproval within ten (10) Business Days after a second written request bearing the legend specified in Subsection 26.13 of this Agreement shall be deemed to constitute the City's conclusive approval of such Plans and Specifications (subject to Concessionaire's compliance with Subsection 26.13 of this Agreement). If the City Manager disapproves the Plans and Specifications for either Phase of the Project, then Developer shall, within thirty (30) days after such disapproval, submit revised Plans and Specifications so that they substantially conform to the Approved Preliminary Plans and then re-submit them to the City Manager pursuant to the foregoing process until the Plans and Specifications have been approved by the City Manager. Concessionaire shall pursue approval by the City of the Plans and Specifications diligently and in good faith and shall use diligent, good faith efforts to obtain the Full Building Permit on or before December 31, 2025.

7.2 The City hereby grants to Concessionaire the right, from and after the Occupancy Date, to undertake the Work, subject to compliance with the provisions of Section 7.1. The Work shall include converting the asphalt parking lots to permeable pavers and an expanded tree canopy for the parking lot and shall otherwise substantially conform to the RFP Conceptual Designs. The Work shall include a public parking component consisting of at seventy-two (72) public parking spaces, all of which spaces shall be located in the rows closest to entrance(s) on Ocean Drive or in such other location as the City shall approve in connection with its approvals of the Plans and Specifications (the "Public Parking Area"). The renovations and improvements shall be designed to meet LEED Gold or Living Building Challenge certification requirements and compliance with the Sustainability Fee program in accordance with Chapter 133 of the City Code. Subject to Unavoidable Delays, the Work shall be completed substantially in accordance with the projected timeline set forth in ***Exhibit 7.2***.

7.3 Concessionaire acknowledges and agrees that the Work to be performed pursuant to Section 7.1 is for the design and construction of public facilities and that the Concessionaire shall ensure compliance by the primary general contractor retained by Concessionaire (the "Prime Contractor") with the requirements of Section 255.05, Florida Statutes, including, but not limited to, the provision of bonds and payment of claims, provided, that, no bonds shall be required from the Concessionaire or third parties whose estimated scope of work is $200,000.00 or less. Concessionaire hereby waives, releases and relinquishes any right to claim or file a construction lien against the Property including, but not limited to, any rights Concessionaire may have under Chapter 713, Florida Statutes. Concessionaire shall include a provision substantially similar to this subsection in each of its contracts, subcontracts and purchase orders, requiring contractors, subcontractors and vendors to waive any claim or entitlement to a construction lien on the Property and to look solely to the credit of Concessionaire or its surety for payment of any sums

due on the Property.

7.4 Prior to commencing the Work or any other renovations or construction at the Concession Area, Concessionaire shall provide the City's Risk Manager with evidence, consisting of certificates of insurance and bonds issued by Florida insurers and/or sureties rated A- or better per A.M. Best's Key Rating Guide, latest edition, for the General Contractor. The General Contractor must carry and maintain throughout the term of such construction and at least until final completion and acceptance of the Work, all lines of insurance coverage as depicted in ***Exhibit 7.4*** and the General Contractor shall provide the Payment and Performance Bonds to be provided by the general contractor in substantially the form prescribed for a public construction bond by Section 255.05, Fla. Stat. (2012), guaranteeing performance and payment of all subcontractors, material persons, and suppliers as set forth therein. As municipal property cannot be encumbered or liened under Florida Law, the Payment and Performance Bonds provided by the Prime Contractor must be equal to the construction bid amount. The City and Concessionaire shall be named as additional insureds and obligees on the Payment and Performance Bonds. The amount of insurance coverage required from the General Contractor will not be less than the amounts set forth in ***Exhibit 7.4***. Subcontractors providing smaller levels of service than that provided by the General Contractor shall also be required to maintain the insurance coverage as depicted in ***Exhibit 7.4***. The Concessionaire shall furnish to the City's Risk Manager certificates of insurance evidencing the coverage required hereunder and the required Payment and Performance Bond from the General Contractor for the City's Risk Manager to review, comment and approve at least thirty (30) days prior to commencement of construction on the Concession Area. All such policies shall provide that the City and the Concessionaire shall be given thirty (30) days prior written notice of any cancellation, lapse, or material modification of said insurance coverage and/or bonds or, if the insurer will not do so, the covenant of the General Contractor to provide such written notice.

7.5 Concessionaire's selection of the General Contractor shall be subject to the advance approval of the City Manager or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed provided the proposed General Contractor satisfies the qualifications listed below, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed General Contractor to perform the General Construction Contract, based on the contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the General Contractor proposed by Concessionaire for such Phase does not have a significant history of material non-compliance with the law, The City agrees to approve any General Contractor proposed by Concessionaire that satisfies each of the following:

(i) Has a State of Florida Building and Business License;

(ii) Has completed at least five projects of similar size and scope as the Project within the last ten (10) years; and

(iii) Has total bonding capacity in excess of $50,000,000.00.

7.6 All Construction Agreements shall include the provisions set forth on ***Exhibit 7.6*** (or language substantially similar thereto which is approved in advance by the City Manager). The City (solely in its capacity as the owner of the Concession Area and not in its governmental capacity) shall reasonably cooperate with Concessionaire in obtaining the Permits and Approvals, including but not limited to building permits (including phased permits) and any other building and development permits, curb cut permits, site plan approvals, and water and sanitary sewer tap

permits and/or such other permits, licenses, or approvals as may be necessary for the development, construction and operation of the Concession Area Structures and Concession Operations and any necessary utility access agreements, shall sign any applications, joinders, consents and/or other authorizations reasonably requested by Concessionaire which are required in order to obtain such Permits and Approvals and shall provide Concessionaire with any information and/or documentation not otherwise reasonably available to Concessionaire (if reasonably available to the City) which is necessary to procure such Permits and Approvals and utility access agreements. Concessionaire shall reimburse the City, within thirty (30) days after the City's demand, for any reasonable out-of-pocket cost or expense payable to the City's technical consultants (other than City's employees), such as architects and engineers, so incurred by the City in connection with the City's reasonable cooperation in obtaining the Permits and Approvals as set forth in this Subsection 7.6. The City shall identify a City point person or persons (the make-up of which may change over time) to liaise with the various City departments in connection with the Project. Any such cooperation, accommodation or other action by the City pursuant to this Subsection shall be without prejudice to, and shall not constitute a waiver of, the City's rights to exercise its discretion in connection with its governmental or regulatory functions and any failure to do so shall not constitute or result in a breach or default by the City of any of the terms or conditions of this Agreement.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

8.1 In connection with the performance of its responsibilities hereunder, Concessionaire shall select, train, and employ (or otherwise retain) such number of employees and/or independent contractors, as is reasonably necessary or appropriate for Concessionaire to satisfy its responsibilities hereunder. Concessionaire shall have the sole responsibility to recruit, hire, terminate and discipline any and all personnel employed (or otherwise retained) by the Concessionaire to satisfy its responsibilities hereunder. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such employees and/or independent contractors. None of the employees or contractors of Concessionaire shall be deemed to be employees or contractors of the City for any purpose whatsoever. Without limiting the generality of the foregoing, Concessionaire shall have the sole responsibility to recruit and employ a full-time general manager and any necessary administrative and accounting personnel that are responsible for the overall management and operation of the Concession Area and Concession Area Structures. Concessionaire shall have the sole responsibility to recruit and employ sufficient personnel to maintain the following functions: general security; janitorial, housekeeping and cleaning; maintenance of electrical systems, plumbing; and air conditioner operation; painting and general overall maintenance of the Concession Area to ensure it is being maintained consistent with other similar first-class facilities. Concessionaire shall maintain personnel policies that assure employment practices do not discriminate on the basis of race, creed, sex, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital or familial status or age.

8.2 Despite any subcontracts by Concessionaire approved by the City Manager or his/her designee and the delegation of certain responsibilities and obligations of Concessionaire as set forth in this Section 8 thereunder, Concessionaire shall remain responsible for ensuring that any such subcontractors perform the services required to be provided under this Agreement are performed in accordance with the terms and conditions of this Agreement.

SECTION 9. HOURS OF OPERATION.

9.1 During the Term, all Concession Areas and Concession Operations thereon shall be open every day of the year, subject to weather (as to outdoor areas) and Force Majeure Events. The hours of operation for the Concession Operations shall be as follows:

(i) Beach Operations, from one (1) hour after sunrise until one (1) hour prior to sunset, with set-up to occur at sunrise and take down to be completed by sunset;
(ii) Restaurant Operation – first floor (casual concept) from 11:00 a.m. until sunset;
(iii) Restaurant Operation – second floor (upscale concept) from 5:00 p.m. until 11:00 p.m.;
(iv) Café Operations from 9:00 a.m. until 5:00 p.m.
(v) Pool Operations, from 11:00 a.m. until sunset; and
(vi) Kids Club, Health and Wellness Center and Retail Pavilion (if opened) from 11:00 a.m. until 7:00 p.m.

Notwithstanding the foregoing, subject to approval of the City Manager or his/her designee, Concessionaire may make application for certain Concession Operations to be closed for specific national or religious holidays, including Christmas Eve. If Concessionaire can show that an increase or decrease in demand for certain services within the Concession Area exists, then Concessionaire may request an extension or decrease, as applicable, in the hours during which such services are offered. The City Manager or his or her designee will determine, in his or her sole discretion, whether allowing such an extension or decrease in the hours of service in question would be in the best interests of the City taking all relevant factors into account, including, without limitation, whether an extension in hours of service would not have an adverse effect on the quality of life of Persons residing in the vicinity of the Concession Area.

As to the Beachfront Area and Pool Area, Concessionaire shall, at its option, be entitled to cease rentals of Concessionaire's Equipment at 5:00 p.m. in order for an orderly wind down of daily operations. Sunrise and sunset shall be established on a daily basis by the National Weather Service.

SECTION 10. MAINTENANCE AND REPAIR.

10.1 City Has No Obligation to Maintain or Repair.

The City shall have no responsibility to maintain or repair any part of the Concession Area, including without limitation, any Concession Area Structure, or the Public Parking Area, landscaping and lighting, electricity lines, water lines, sanitary sewer lines, gas lines, or telephone and cable lines serving the Concession Area. Notwithstanding the foregoing or any other provisions of this Agreement, but subject to Section 18, if any part of the Concession Area is damaged or destroyed or requires repair, replacement, or alteration and/or if Concessionaire fails to maintain the Concession Area in accordance with the Maintenance Standards, the City shall have the right to perform same and the cost of such repairs, replacement, alterations and/or maintenance shall be paid by Concessionaire to City within ten (10) days of written demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Concessionaire, City may proceed forthwith to have the repairs or replacements made and pay the costs thereof. Within ten (10) days after written demand, Concessionaire shall

reimburse City for the cost of making the repairs. For the avoidance of doubt, the City shall remain responsible for maintaining and repairing water and sewer mains and stormwater infrastructure, if any, lying within the Concession Area, but the City shall have no responsibility to maintain or repair any lines connecting the City's water and sewer mains to any portion of the Concession Area or any drains and lines that allow for the drainage of stormwater from the Concession Area into the City's stormwater infrastructure.

10.2 Maintenance and Repairs by Concessionaire.

10.2.1 The Concessionaire accepts the use of the Concession Area in its "AS IS, WHERE IS" condition with all faults other than any Hazardous Materials or other environmental issues existing in the Concession Area prior to the Occupancy Date. Concessionaire shall maintain or cause to be maintained, at its own cost and expense, the Concession Area, the Concession Area Structures and the Public Parking Area in a first-class manner which is at least equal to the condition and quality of high-end beach establishments in other world-class beach resorts (the "Required Condition"), in compliance with all applicable Requirements, both inside and out, including, without limiting the generality of the foregoing, Concessionaire is specifically required to maintain and make repairs to: (i) all pipes, lines, ducts, wires, or conduits contained within the Concession Area; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); (iii) Concessionaire's signage; (iv) any heating or air conditioning equipment serving the Concession Area ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract that includes, without limitation, preventive HVAC maintenance no less than quarterly); (v) all or any portion of the Work including, without limitation, any materials, machinery, finishings, fixtures, and equipment related thereto; (vi) all building safety systems including, but not limited to, smoke, fire, and carbon monoxide detector systems, backup generator operation, emergency battery backup functions, emergency lighting, emergency egress, special needs and blackout preparedness equipment, emergency water and fire sprinkler system (all building safety systems shall be tested on at least an annual basis or as required by applicable Requirements and maintained in good operating condition at all times); (viii) ceilings, stairways, floor slabs and floor coverings, sidewalks, walkways, hallways, corridors, landscaping (irrigation system), canopies (awnings and frames), loading dock/service areas, utility rooms, electric rooms, building structure including envelope, roof, siding, painting, structural integrity; (ix) regular inspections of elevator and escalator controls, motors, suspension systems, and related equipment, and shall maintain such systems substantially in accordance with manufacturer required standards (collectively, the "Maintenance Standards"). The Maintenance Standards shall also include Concessionaire's obligation: (x) to furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Concession Area and Concessionaire's signage, all at Concessionaire's sole cost and expense; (y) to maintain sufficient garbage collection areas so that garbage is not overflowing and enclosures remain closed at all times unless garbage is actively being disposed or collected. The Concession Area shall further be kept in good order, condition and repair by Concessionaire, and in a clean, sanitary and safe condition in accordance with all laws, including without limitation, the ADA, and directions, rules and regulations of the health officer, fire marshal, building inspector or other officers of any governmental agencies having jurisdiction, all at the sole cost and expense of Concessionaire. Concessionaire shall also be responsible for replacing all fixtures and equipment which are stolen damaged beyond repair or worn out. The interior wall finishes, interior flooring finishes,

fixtures, and furniture in the Concession Area shall be repaired, replaced, and/or maintained by Concessionaire, at Concessionaire's sole cost and expense, periodically as to keep the Concession Area in a condition that satisfies the Required Condition.

10.2.2 All repair and maintenance performed by Concessionaire shall be performed by contractors or workmen approved by the City Manager or the City Manager's designee.

10.2.3 Concessionaire's compliance with the Maintenance Standards shall be subject to City's reasonable discretion. Concessionaire and City shall inspect the physical structure of the Concession Area not less frequently than every three (3) years, at the expense of the Concessionaire, and using a contractor mutually agreed upon by the parties, to identify deferred maintenance items and develop a schedule of renewal and replacement projects for the following three (3) years.

10.2.4 At the expiration or earlier termination of the Term, Concessionaire shall surrender the Concession Area to City in as good condition and repair as Concessionaire is required to maintain the Concession Area throughout the Term, reasonable wear and tear excepted.

10.2.5 Despite any subcontracts by Concessionaire approved by the City Manager or his/her designee and the delegation of certain responsibilities and obligations of Concessionaire as set forth in this Section 10, Concessionaire shall remain responsible for ensuring that any such subcontractors perform the services required to be provided under this Agreement are performed in accordance with the terms and conditions of this Agreement.

10.3 Ownership of Improvements and Fixtures; Removal.

All improvements, furnishings, and equipment constructed or installed on the Concession Area by Concessionaire shall be personal property and Concessionaire shall have legal title thereto during the term of this Agreement. Upon the expiration or termination of the Agreement, title to all permanent improvements constructed on the Concession Area shall vest in City. Title to all supplies, furnishings, inventories, and removable equipment and other personal property shall remain in Concessionaire, and Concessionaire shall have the right to remove such items from the Concession Area without damaging the Concession Area unless Concessionaire is in default under this Agreement. Concessionaire may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Concessionaire is not in default under this Agreement; and Concessionaire shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the improvements and trade fixtures in the Concession Area as City shall require to be removed and restore the Concession Area to the condition existing on the Commencement Date. Concessionaire shall at its own expense repair any damage caused to the Concession Area by such removal. If Concessionaire does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of City, become the property of City and may be removed from the Concession Area and sold or disposed of by City in such manner as it deems advisable without any accounting to Concessionaire.

10.4 Liens.

Concessionaire shall promptly pay for all materials supplied and work done in respect of the Concession Area by, through, or under Concessionaire so as to ensure that no lien is recorded against any portion of the Concession Area or against City's or Concessionaire's respective interests therein. If a lien is so recorded, Concessionaire shall discharge it promptly by payment or bonding. If any such lien against the Concession Area is recorded and not discharged by Concessionaire as above required within thirty (30) days following written notice to Concessionaire, City shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Concessionaire to City. City and Concessionaire expressly agree and acknowledge that no interest of City in the Concession Area shall be subject to any lien for improvements made by Concessionaire in or for the Concession Area, and City shall not be liable for any lien for any improvements made by Concessionaire, such liability being expressly prohibited by the terms of this Agreement. Concessionaire hereby agrees to inform all Contractors performing work in or for or supplying materials to the Concession Area of the requirements of this Section and to include provisions in all contracts with such Contractors confirming same.

10.5 Beachfront Area Maintenance.

10.5.1 Concessionaire assumes sole responsibility and expense for maintenance, including the collection and daily removal of litter, garbage and debris of the following areas: (1) the Beachfront Area, including all facilities and equipment thereon; (2) any Buffer Zone immediately adjacent to any portion of the Concession Areas (including without limitation the Southern Accessibility Zone, the Northern Accessibility Zone and any Lifeguard Facility Zone) (3) the area within fifty (50) feet of any of the Concessionaire's storage areas located outside of the Beachfront Area (if any are permitted); (4) any area within fifty (50) feet of a food and beverage dispensing facility located outside of the Beachfront Area (if any is permitted); and (5) the Dune area landward and adjacent to any portion of the Concession Area. (Note that, for purposes of this **Subsection 10.5.1**, and of any other section of the Agreement which references the term "areas outside of the Concession Area," that term shall be deemed to reference and include only the specific areas described in clauses (2) through (5) above).

10.5.2 Facilities/Equipment/Furnishings.

Concessionaire must provide and maintain, at its own cost and expense, all facilities, equipment, and furnishings required to operate the Concession Operations. In the event any of the aforesaid items are lost, stolen, or damaged during the Term, they shall be repaired or, if irreparable, replaced, at the sole cost and expense of the Concessionaire, within fifteen (15) days of written notice from the City Manager or his/her designee, provided, that, if any such item reasonably requires more than such 15-day period to repair or replace, Concessionaire shall not be in default of this **Subsection 10.5.2**, provided, that, it commences to repair and replace promptly after notice thereof from the City and pursues such repair or replacement with all due diligence.

10.6 Orderly Operation.

Concessionaire shall keep a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Concession Area and all facilities, equipment and furnishings thereto. There shall be no living quarters,

nor shall anyone be permitted to live, within the Concession Area, the Concession Area Structures and/or any other facilities thereon, provided, that, if Concessionaire becomes aware of any such living quarters or that someone is living in the Beachfront Area, its only obligation with regard thereto is to notify the Miami Beach Police Department promptly. Concessionaire shall make available all of its facilities, equipment and furnishings for inspection during hours of operation by the City Manager or his/her authorized representative.

10.7 Environmental Matters.

10.7.1 Concessionaire shall not (and shall ensure any Subconcessionaires do not) knowingly incorporate into, use, or otherwise place or dispose of at the Concession Area (or allow others to incorporate into, use, or otherwise place or dispose of at the Concession Area) any Hazardous Materials, as hereinafter defined, unless (i) such Hazardous Materials are for use in the ordinary course of business (i.e., as with office or kitchen cleaning supplies or in the case of the Restaurant Operations, the use of cooking products, propane gas and similar products typical to the industry), (ii) notice of and a copy of the current material safety data sheet is provided to City for each such Hazardous Material (except for Hazardous Materials used by Concessionaire and Subconcessionaires in the ordinary course of business as set forth in (i), above), and (iii) such materials are handled and disposed of in accordance with all applicable governmental laws, rules, and regulations. If City or Concessionaire ever has actual knowledge of the presence at the Concession Area of Hazardous Materials which affect the Concession Area, such party shall notify the other thereof in writing promptly after obtaining such knowledge. For purposes of this Agreement, "Hazardous Materials" shall mean: (a) petroleum and its constituents; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Concession Area or the operations thereon.

10.7.2 If Concessionaire or its employees, agents, contractors, Subconcessionaires or assigns shall ever violate the provisions of **Subsection 10.7.1**, above, then Concessionaire shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Concession Area within such period of time as may be reasonable under the circumstances after written notice by City, provided that such work shall commence not later than thirty (30) days from such notice and be diligently and continuously carried to completion by Concessionaire or Concessionaire's designated contractors. Concessionaire shall notify City of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision; and City shall have the

right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Concession Area is otherwise closed (i.e., holidays) if reasonably required for the protection of Concessionaire's patrons.

10.7.3 Concessionaire agrees to defend, indemnify and hold harmless City against any and all claims, costs, expenses, damages, liability, and the like, which City may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this **Section 10.7**, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Concessionaire, its employees, agents, contractors, Subconcessionaires or assigns. Concessionaire's liability under this **Section 10.7.3** shall survive the expiration or any termination of this Agreement.

10.7.4 Concessionaire shall have no responsibility to pay for, assist with, contribute to, or remediate any environmental issues affecting the Concession Area (including, for the avoidance of doubt, the Public Parking Area) that existed prior to the Occupancy Date.

10.8 Security.

Concessionaire shall be solely responsible for providing such security measures as Concessionaire, in its professional experience and judgment, may deem necessary to protect any of its facilities, equipment, and furnishings within the Concession Area and patrons of the Concession Operations. Under no circumstances shall the City be responsible (i) for any stolen or damaged facilities, equipment, or furnishings; nor shall the City be responsible for (ii) any stolen or damaged personal property of Concessionaire's patrons, guests, invitees, employees, contractors, and/or any other third parties; provided that, as to clause (ii), the foregoing is not intended to impose any affirmative duty on Concessionaire for any such theft or damage.

10.9 Vehicles on the Beach.

All vehicles used by Concessionaire, or its employees, agents or contractors, in the Beachfront Area shall comply with the rules and regulations of the City of Miami Beach as same may be amended from time to time, including, but not limited to, as to type of vehicle, use of vehicle and hours of use of vehicle. For purposes hereof, vehicles shall include (i) any "on-road" vehicles and/or trailers licensed in accordance with applicable County, State and Federal law, to operate on public streets and roadways; and (ii) any "off-road" vehicles such as golf carts and all-terrain vehicles ("ATV's"); and (iii) any other vehicles, trailers or carts permitted for use in the Beachfront Area. The current rules and regulations governing vehicles in the Beachfront Area are attached hereto as **Exhibit 10.9**.

10.10 Inspection.

The Concessionaire agrees that the Concession Area, and all facilities, equipment, furnishings, and operations thereon, may be inspected at any time during hours of operation by the City Manager or his/her authorized designee(s), or by any other municipal, County, State agency or official having responsibilities for inspections of such operations. The Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the concession operation by the City,

or any public agency or official, in enforcing their duties or any laws or ordinances. Any such interference shall not relieve the Concessionaire from any obligation to perform hereunder.

SECTION 11. DAMAGE AND DESTRUCTION.

11.1 Damage to Concession Area.

If the Concession Area Structures or other improvements on the Concession Area (collectively, "Improvements") are partially or totally destroyed due to fire or other casualty, the Concessionaire, except as hereafter provided in this **Subsection 11.1**, shall, at its sole cost and expense within the earlier of: (i) thirty (30) days after receiving insurance proceeds with respect to any such casualty or (ii) one hundred eighty (180) days from the date of such casualty, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the work with all reasonable dispatch, so as to fully complete such work as expeditiously as reasonably possible consistent with the nature and extent of the casualty, with such Improvements to be repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such casualty. MG and PG shall abate proportionately to the portion of the Concession Area, if any, rendered unusable from the date of destruction or damage until the repairs have been substantially completed. Upon being notified that the repairs have been substantially completed, Concessionaire shall diligently perform all other work required to fully restore the Concession Area for use in Concessionaire's business, in every case at Concessionaire's cost and without any contribution to such cost by City. Concessionaire agrees that during any period of reconstruction or repair of the Concession Area, it will continue the operation of its business within the Concession Area to the extent practicable. If the damage or destruction is a result of the negligence or willful misconduct of Concessionaire or Concessionaire's employees, contractors or agents, the charges payable under this Agreement shall not abate.

11.2 Termination for Damage. Notwithstanding Section 11.1, if damage or destruction which has occurred to the Concession Area is of a material nature and such that, in the reasonable opinion of City or Concessionaire, such reconstruction or repair cannot be completed within three hundred and sixty five (365) days of the happening of the damage or destruction, City or Concessionaire may, at its sole option, terminate this Agreement on notice given within sixty (60) days after such damage or destruction.

SECTION 12. PARKING.

12.1 Concessionaire shall stage construction of the Work in a manner that minimizes the extent and duration of displacement of the existing public parking spaces in the Concession Area during construction. In furtherance of and without limiting the foregoing, as an Occupancy Condition, Concessionaire shall submit a parking mitigation plan in form and substance acceptable to the City in its sole discretion that either (a) phases construction of the parking areas within the Concession Area so that there will be seventy-two (72) municipal parking spaces within the Concession Area at all times or (b) addresses both loss of parking by providing for alternate parking within proximity of the existing public parking spaces (not greater than one-half mile) and loss of revenue to the City. The City shall consider in good faith leasing the seventy-two (72) municipal parking spaces in the Concession Area to Concessionaire for the period commencing on the Occupancy Date through completion of construction in the Public Parking Area at a monthly rate to be determined by reference to the average revenue to the City from the existing parking lot in the Concession Area during the applicable month during the three (3) years prior to the Occupancy Date. Concessionaire shall use commercially reasonable efforts to complete

construction of the Public Parking Area by or before December 31, 2026.

12.2 The City shall manage and operate the Public Parking Area, provided, Concessionaire shall be responsible for maintaining the Public Parking Area at its sole cost and expense. Upon Substantial Completion of the Work, the Concession Area may be subdivided by Declaration or otherwise in a manner reasonably satisfactory to the City to specifically exclude the Public Parking Area. For the avoidance of doubt, the City shall be entitled to receive and retain all gross revenues from the operation of the Public Parking Area.

SECTION 13. SIGNAGE AND NAMING RIGHTS.

13.1 Concessionaire, at Concessionaire's expense, and the Subconcessionaires, at their respective expense, shall have the right to erect and maintain signage upon the Concession Area, including, in Concessionaires discretion, signage which identifies the overall facility and individual Concession Areas. The design and specification of such signage shall be subject to City's sign criteria as adopted from time to time and such design and specification (including camera-ready artwork) shall be submitted for City's prior approval. City's current signage criteria is attached hereto and made a part hereof as ***Exhibit 13.1***. All such signage shall be in accordance with all applicable Requirements. Any new or altered signage posted by Concessionaire (or any Subconcessionaire) on its facilities and equipment shall be subject to the prior approval of the City Manager or his or her designee as to size, shape and placement of same.

13.2 The name for the new beach establishment shall require the approval of the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed, or if City Commission approval is required, then in City Commission's sole discretion. The foregoing is not intended to limit signage rights for Subconcessionaires, whose signage may be on the exterior of their spaces within the Concession Area, subject to compliance with applicable Requirements.

SECTION 14. INSURANCE.

14.1 Concessionaire shall maintain during the Term, at its sole cost and expense, insurance coverage meeting the criteria established by the City as set forth on ***Exhibit 14*** attached hereto and made a part hereof.

14.2 Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) per annum until paid, and such failure shall be deemed an Event of Default hereunder.

14.3 The terms of insurance policies referred to in this Section 14 shall preclude subrogation claims against Concessionaire, the City, and their respective officers, employees, contractors and agents.

SECTION 15 WAIVER OF SUBROGATION.

15.1 Without limiting Concessionaire's indemnity obligations, City and Concessionaire each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Concession Area, the Concession Area Structures or any other Improvements, or any further improvements or renovation during the Term to any of the foregoing, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are, or could or should be insured against under the terms of the standard fire and extended coverage insurance policies referred to in this Agreement, regardless of whether such insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees. Concessionaire shall obtain from its insurers, under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained by it at any time during the Term hereof insuring or covering the Concession Area or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of Concessionaire have against the City, and Concessionaire shall indemnify, defend, and hold harmless City against any loss or expense, including reasonable attorney's fees and costs at all tribunal levels.

SECTION 16. LOSS OR DAMAGE.

16.1 Except to the extent otherwise expressly set forth herein, Concessionaire acknowledges that the City will not be performing any maintenance and repairs to the Concession Area or the Public Parking Area. City shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Concession Area or the Public Parking Area, or damage to property of Concessionaire or of others located in the Concession Area or the Public Parking Area, nor shall it be responsible for any loss of or damage to any property of Concessionaire or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of City. Without limiting the generality of the foregoing, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Concession Area or the Public Parking Area or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of any improvements on the Concession Area or the Public Parking Area, or from the street or any other place or by dampness, or by any other cause whatsoever, unless resulting from the gross negligence or willful misconduct of City. Concessionaire agrees to indemnify City and hold it harmless from and against any and all loss, claims, actions, damages, liability, and expense of any kind whatsoever (including attorneys' fees and costs at all tribunal levels), unless caused by the gross negligence or willful misconduct of City, arising from any occurrence in, upon, or at the Concession Area or the Public Parking Area, or the occupancy, use, or improvement by Concessionaire or its agents or invitees of the Concession Area or the Public Parking Area, or occasioned wholly or in part by any act or omission of Concessionaire its agents, employees, and invitees or by anyone permitted to be in the Concession Area by Concessionaire.

SECTION 17. INDEMNITY.

17.1 In consideration of a separate and specific consideration of $10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, officials, employees, contractors, and agents, from and against any claim, demand or cause of

action of whatsoever kind or nature arising out of (a) the negligent act or willful misconduct of Concessionaire, its officers, directors, members, managers, employees, contractors (including, without limitation, any Subconcessionaires), or agents, in the performance of services under this Agreement, excluding, however, any such liability that arises as a result of the willful misconduct or gross negligence of the City, its officers, officials, employees, contractors, or agents (b) Concessionaire's breach of the terms of this Agreement or its representations and warranties in Section 30; and/or (c) any lawsuit, action or proceeding challenging the validity, execution or effectiveness of the Concession Agreement, any tort or other claim related to any of the foregoing, or any such challenge relating to any approval required under the County Charter, City Code and/or the City Charter ("Lawsuit") but excluding the lawsuit styled Penrod Brothers Inc v. City of Miami Beach (Case Number 1:23-cv-23362-JEM) or any subsequent lawsuit or proceeding instituted by Penrod Brothers, Inc.. Concessionaire shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals (the "Liabilities").

17.2 In addition, and in consideration of a separate and specific consideration of Ten ($10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officers, employees, contractors, Subconcessionaire(s), agents or servants not included in Subsection 17.1 herein and for which the City, its officers, employees, contractors, subconcessionaire(s), agents or servants are alleged to be liable excluding, however, any such liability that arises as a result of the willful misconduct or gross negligence of the City, its officers, officials, employees, contractors, or agents. Concessionaire shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals (the "Misconduct Liabilities").

17.3 In the event any Person not a party to this Agreement shall make any demand or claim or file or threaten to file or continue any lawsuit, which demand, claim or lawsuit may result in Liabilities and/or Misconduct Liabilities to the City, the City shall give written notice to such effect to the Concessionaire promptly upon becoming aware thereof, including with such notice all correspondence and documents in the possession of the City relating thereto (collectively, the "Notice"). In such event, within ten (10) days after Notice of such demand, claim or lawsuit (provided, however, that the failure to give such Notice shall not relieve the Concessionaire of its obligations hereunder unless, and only to the extent that, such failure caused the damages for which the Concessionaire is liable to be greater than they would otherwise have been had the City given prompt notice hereunder), or if no such notice is given, within ten (10) days of becoming aware thereof, Concessionaire shall have the right, at its sole cost and expense, to retain counsel (which counsel shall be reasonably satisfactory to the City), to defend any such demand, claim or lawsuit. Thereafter, the City shall be permitted, but not required, to participate in such defense at its own expense. Notwithstanding the foregoing, if (a) the Concessionaire fails to retain counsel reasonably satisfactory to the City within such ten (10) day period or (b) if the named parties to any such proceeding (including any impleaded parties) include both the Concessionaire and the City or if the Concessionaire proposes that the same counsel represent both the Concessionaire and the City and representation of both parties by the

same counsel would be inappropriate due to actual or potential differing interests between them, then the City shall have the right to retain its own counsel at the cost and expense of the Concessionaire.

17.4 Notwithstanding anything to the contrary contained in **Subsection 17.1** or **17.2,** it is acknowledged and agreed that Concessionaire's employees and agents that will be responsible for the Beachfront Operations are not lifeguards nor water safety instructors and shall have no responsibility or liability whatsoever with regard to conditions or events in the Beachfront Area which are out of Concessionaire's control including, without limitation, (a) the surf, sand, weather, water or wind conditions or other naturally occurring conditions or elements such as sand bars, flora and fauna; (b) the safety or health of any persons in the Beachfront Area or elsewhere, where the threat to their safety or health was not directly caused by Concessionaire's negligent act or omission during business hours; or (c) the competency, fitness, physical limitations, or abilities of any persons using the concession services offered in the Beachfront Area. Moreover, it is further acknowledged and agreed that Concessionaire and its employees and agents shall have no responsibility or liability for incidents occurring in the Beachfront Area outside of normal business hours, where the incident was not directly caused by Concessionaire's negligent act or omission. It is further acknowledged and agreed that Concessionaire provides beach services and does not control the swimming area in the Atlantic Ocean adjacent to the Beachfront Area. For the avoidance of doubt, the foregoing provisions are intended to apply expressly to the Beachfront Area and Concessionaire shall be solely responsible for taking such steps as Concessionaire deems reasonably necessary to ensure the safety and wellbeing of patrons in the Pool Area, provided, it is acknowledged and agreed that nothing in this Section 17.5 or elsewhere in this Agreement is intended to impose any obligation on Concessionaire to employ lifeguards for any part of the Concession Area. Similarly, it is acknowledged and agreed that although the City has a lifeguard presence within or near the Beachfront Area, the City has no obligation to employ lifeguards at the Pool Area, as the Pool Area will be under the exclusive control of the Concessionaire.

17.5 Concessionaire shall be permitted to set forth signage throughout the Beachfront Area and the Pool Area in the form of ***Exhibit 17.5.***

17.6 The provisions of this Section 17 shall survive the expiration or termination of this Agreement.

SECTION 18. FORCE MAJEURE.

18.1. Force Majeure Generally.

The performance of any act by the City or Concessionaire hereunder may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance of its obligations under this Agreement by a Force Majeure Event, provided, however, if such condition persists for more than one hundred eighty (180) consecutive days, the City and Concessionaire may in their sole discretion renegotiate the terms of this Agreement. If the performance of the contractual obligations is prevented or delayed by an event believed by a party to be a Force Majeure Event, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case later than thirty (30) days from the occurrence of the event, provide notice of (i) of the occurrence of the event believed to be a Force Majeure Event, (ii) of the nature of the event and the cause thereof, (iii) of the

anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure Event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure Event is in fact a Force Majeure Event, and the burden of proof of the occurrence of a Force Majeure Event shall be on the requesting party.

18.2 Labor Dispute.

In the event of a labor dispute which results in a strike, picket, or boycott affecting the Concession Areas described in this Agreement (a "Labor Dispute"), Concessionaire shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by Concessionaire of applicable collective bargaining agreements and there has been a final determination of such fact which is not cured by Concessionaire within thirty (30) days following such determination or, if compliance with such final determination is not reasonably susceptible to being cured within such period, then Concessionaire shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes such cure.

18.3 Waiver of Loss from Hazards.

The Concessionaire hereby expressly waives all claims against the City or its officers, officials, employees, contractors or agents, for loss or damage sustained by the Concessionaire resulting from any Force Majeure Event or Labor Dispute, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City or its officers, officials, employees, contractors, or agents, and forever releases and discharges the City and its officers, officials, employees, contractors, or agents, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 19. DEFAULT, TERMINATION AND PENALTIES

Each of the events or occurrences described in Subsections 19.1 through 19.3 shall constitute an Event of Default under this Agreement. An Event of Default by Concessionaire shall entitle City to exercise any and all remedies available at law or in equity as well as those expressly provided for in this Section 19. An Event of Default by City shall entitle Concessionaire to exercise any and all remedies available at law or in equity as well as those expressly provided for in this Section 19.

19.1 Bankruptcy.

If either the City or Concessionaire shall be (a) adjudged bankrupt or insolvent, or (b) if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and in any such case shall not be discharged within ninety (90) days after appointment, or (c) if either party shall make an assignment of its property for the benefit of creditors, or (d) shall file a voluntary petition in bankruptcy or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or (e) if such petitions shall be filed against either party and shall not be dismissed within ninety (90) days after such filing, then the other party may immediately, or at any time thereafter, and without

further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

19.2 Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of $50.00 per day for such late payment, in addition to interest at the highest rate allowable by law (currently 18% per annum). If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any additional remedies which may be available to it for breach of contract.

19.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement (other than default in payment under **Section 19.2** above), and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any additional remedies which may be available to it for breach of contract. Notwithstanding the foregoing, in the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof except to the extent of a delay beyond such ninety (90) day period caused by a Force Majeure Event. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide City with written notice of same.

19.4 City's Remedies for Concessionaire's Default.

If an Event of Default by Concessionaire as set forth in this Section shall occur, the City may, after notice (if required) and the expiration of applicable cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including, but not limited to, the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire, but in no event shall the City specify a surrender date that is less than ten (10) days from the date the notice is delivered to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area to City pursuant to the provisions of **Subsection 19.7**. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate (other than those provisions which by their terms survive such termination) and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

a. the right to injunction or other similar relief available to it under Florida law against

Concessionaire; and

b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages for breach of contract resulting from Concessionaire's default.

19.5 Concessionaire's Remedies for City's Default.

If an Event of Default, as set forth in this Section, by the City shall occur, the Concessionaire may, after notice (if required) and the expiration of the applicable cure periods, as provided above, at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to City pursuant to the provisions of **Subsection 19.6**.

19.6 Surrender of Concession Areas.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Areas in as good condition and repair as Concessionaire is required to maintain the Concession Area throughout the Term, , reasonable wear and tear excepted (including any beach erosion not directly caused by Concessionaire and/or its operation). Concessionaire shall remove all its facilities, equipment, fixtures, personal property, etc. upon seventy-two (72) hours of receipt of written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area(s) after termination of this Agreement and expiration of such 48-hour period shall constitute trespass by the Concessionaire and may be prosecuted as such. In addition, the Concessionaire shall pay to the City two times the daily rate calculated by dividing the MG in effect at the time into three hundred sixty-five (365) as liquidated damages for such trespass and holding over.

SECTION 20. ASSIGNMENT.

Except as otherwise provided in **Section 3** and in this **Section 20**, Concessionaire shall not assign, grant any concession or license, or otherwise transfer all or any portion of this Agreement and/or of the Concession Area(s) (all of the foregoing are herein after referred to collectively as "transfers"), without the prior written consent of the City Manager or his/her designee.

If there is a change in control of Concessionaire, then any such change in control shall constitute a "transfer" for purposes of this Agreement and shall be approved by the Manager or his or her designee prior to consummation of such change in control. "Change in control", for purposes hereof, shall mean a change of the ownership, directly or indirectly, of greater than thirty-three and four tenths percent (33.4%) of the voting or ownership interest or right to profits in such Concessionaire to any non-Affiliate, by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise; provided, that, the foregoing shall not be deemed to include (i) a pledge or collateral assignment of the profits of Concessionaire in connection with

any financing, provided such pledge or collateral assignment is subordinate to the rights of the City to the fees payable to the City pursuant to **Section 4** hereof; (ii) any transfer to other owners of Concessionaire or to trusts the beneficiaries of which are any owner(s) of Concessionaire or member(s) of their immediate family; (iii) a change in the ownership of Concessionaire through a registered public offering of shares in Concessionaire; or (iv) the merger or consolidation by Concessionaire or the sale of all or substantial all of the assets of Concessionaire with another party provided that the managers of Concessionaire remain in control of any such successor entity (clauses (i), (ii), (iii) and (iv) above collectively are referred to herein as the "Permitted Transfers"). Notwithstanding the City Manager's delegated authority to approve any matter as specified herein, the City Manager may elect to have the City Commission determine any matter or approval contemplated under this Agreement (within the timeframe therefor as if the approval was being determined by the City Manager).

Concessionaire shall notify the City of any proposed transfer that is not a Permitted Transfer prior to consummation of same for the approval of the City or the City Manager or his/her designee, as applicable, and the City or the City Manager or his/her designee, as applicable, shall respond within thirty (30) days. In the event that any such transfer is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer made without complying with this Section shall be null, void, and of no effect and shall constitute an Event of Default under this Agreement. Notwithstanding any such consent, or any permitted transfer under any provision of this Section, each approved transferee shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred, and the City shall be permitted to enforce the provisions of this Agreement directly against any transferee of the Concessionaire without proceeding in any way against any other person. In addition, if Concessionaire makes a series of transfers which cumulatively equals thirty-three and four tenths percent (33.4%), then it shall be required to follow the procedures outlined in this paragraph as to the transfer which results in a cumulative transfer of thirty-three and four tenths percent (33.4%).

SECTION 21. SPECIAL EVENTS / SPONSORSHIPS.

21.1 With the exception of the Team Building Events as permitted by **Section 3.1.9**, Concessionaire's proposed uses of the Beach Area, as set forth in **Section 3** herein, do not contemplate the production, promotion or sponsorship by the Concessionaire of special events in any of the Concession Areas. In the event Concessionaire does produce, promote, or sponsor a special event upon the Beach Area (other than Team Building Events), it shall comply with by the City's Special Events Permit Requirements and Guidelines, as same may be amended from time to time, including the payment of all required fees. City acknowledges that the Restaurant Operations shall be entitled to run specialty events from time to time without approval of the City Manager or his/her designee including cooking demonstrations, visits by celebrity chefs, special dining experiences and the like.

21.2 The City Manager or his/her designee shall evaluate requests for special events permits on a case by case basis in accordance with the City's Special Events Permit and Film and Print Permit Requirements and Guidelines, as may be amended from time to time (the "Guidelines"). In the event that a special event and/or film permit is requested by an entity other than the Concessionaire, and the proposed special event and/or film production is scheduled to occur within the Beachfront Area, as such Concession Area is delineated in the Site Plan, and would cause the operations within the Beachfront Area to cease wholly or partly, and provided that the Concessionaire is not in default under the Agreement at

the time of the request, the Concessionaire agrees to cooperate with the City and the special event or film permitee to allow use of such Concession Area during the period of the special event or film production, including set-up and break-down time. City agrees to provide no less a special event and/or film permit than thirty (30) days prior written notice to Concessionaire of any such proposed special event and/or film permit.

21.2.1 Should the Concessionaire be displaced from all or any portion of the Beachfront Area due to a special event or film production, then the Concessionaire shall be entitled to a "Displacement Fee" (as hereinafter defined). For purposes of this subsection only, "displacement" shall mean that the Concessionaire cannot provide the food and beverage services, conduct sales of Beach-Related Sundries, or rent Beach and Pool Equipment in the Beachfront Area as a result of a special event or film production under a permit requested by a person other than the Concessionaire.

The Displacement Fee for the Beachfront Area, when applicable, will be calculated by the City Manager or his/her designee and Concessionaire at the start of each Agreement year. The Displacement Fee shall be based upon the average of daily revenues generated by the Concessionaire in the Beachfront Area, and shall be based upon the highest revenues generated during the Agreement years over the last three (3) full years of revenues for that section of the Concession Area (provided, that if a Force Majeure Event affected the generated revenue during such three (3) year period, then the generated revenue shall be equitably increased for any diminution in revenue on account of the Force Majeure Event), multiplied by the number of days that Concessionaire is displaced, provided, that, for any displacement prior to the third anniversary of the Commencement Date, the Displacement Fee will be mutually agreed upon by Concessionaire and the City Manager or his or her designee. The City shall cause the Displacement Fee to be paid directly to the Concessionaire by the special event permittee or film production (as the case may be), and Concessionaire shall pay to the City the City Displacement Fee with respect thereto. The Concessionaire may waive in writing all or a portion of the Displacement Fee, at its sole option, in exchange for other consideration(s) of equal value from the special event permittee or film production, as may be negotiated directly between the Concessionaire and the special event permittee or film production ("Alternative Consideration"), but shall nonetheless pay the City the City Displacement Fee based upon the full amount of the Displacement Fee.

21.2.2 Notwithstanding anything to the contrary, if a special event or film production occurs in the Beachfront Area, Concessionaire shall not be liable for any damage to the Beachfront Area or areas on the public beach outside of the Beachfront Area as defined in **Subsection 10.1** caused by such event or production, any acts or omissions of the special event permittee or film production crews, charges, fees or other expenses, governmental or otherwise, in connection with such special event or film production, nor for waste clean-up, removal, or other obligations under this Agreement with respect to the waste generated by the special event permittee or film production during the permitted time, it being understood that any rights under this Agreement against the Concessionaire on account thereof are hereby expressly waived.

21.3 City Special Events.

Notwithstanding **Subsections 21.1 and 21.2** above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to displace the Concessionaire for City-produced special events and/or City-produced productions. In such cases, the City may require that Concessionaire cease and desist operations during the term of, and in the area of, the City-produced special event and/or production. No Displacement Fee shall be paid by the City to the Concessionaire for a City-produced special event/production occurring in the Beachfront Area. If the Concessionaire is not required to close or chooses to remain open without interference to the City-produced special event and/or production, Concessionaire agrees to cooperate with the City. If the Concessionaire is allowed to remain open during City-produced special events and/or productions, the Concessionaire may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff, approved by the City, that the Concessionaire has available for the public on a normal day, 365 days per year. Such equipment or staff shall not be increased or altered during City-produced special events and/or productions without the prior written consent of the City Manager or his/her designee.

21.5 Sponsorships; Co-Branding.

21.5.1 The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation (hereinafter referred to in this subsection as a "City Mark" or the "City Marks"). Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City Mark, including any monetary contributions, shall belong solely and exclusively to the City. The foregoing is not intended to limit the right of Concessionaire or any Subconcessionaire to enter into endorsement and/or sponsorship agreements provided same do not interfere with the rights of the City hereunder.

21.5.2 Concessionaire shall be specifically prohibited from entering into, or otherwise creating, endorsements or sponsorship agreements with third parties which are based solely or in any part on the marketing value of a City Mark. This shall include, for example purposes only, any agreement between the Concessionaire and a food and beverage and/or skin care product company for the designation of a product(s) as the official product(s) of Miami Beach, South Beach, etc.

21.5.3 The prohibition on Concessionaire entering into endorsements or sponsorship agreements, pursuant to this **Subsection 21.5**, shall not be deemed to include nor prohibit the Concessionaire's right (a) to sell advertising for display in locations not plainly visible to the general public (but, for example, visible to beachgoers), such as the underside of umbrellas, menu display boards contained within a kiosk or hut) and, subject to the approval of the City Manager or his or her designee and the City Commission, such other advertising; or (b) to offer the exclusive sale, rental or use of any particular brand or product that would otherwise be permitted for use or sale pursuant to this Agreement, subject to the Concessionaire's disclosure of same, as required pursuant to this paragraph, and subject to the City's rights in the following paragraphs. Moreover, the City will not limit Concessionaire's ability to negotiate a reduced rate for purchase from any vendor whose product(s) Concessionaire uses or offers for sale or rent pursuant to this Agreement, provided that the value of such reduced rates shall be treated as "Gross

Receipts" as calculated under this Agreement. Prior to entering into any such agreements or arrangements, Concessionaire shall provide the City for the prior written approval by the City Manager or his or her designee with an itemized list describing such agreements or arrangements which may be imminently entered into or made, which list shall be updated by Concessionaire within thirty (30) days of a particular brand or product being added or deleted, as the case may be. Any gross receipts derived by Concessionaire under this paragraph are intended to be included as part of Gross Receipts as calculated under this Agreement. Notwithstanding the preceding, any agreements or arrangements which have been entered into or made, or which may be imminently entered to or made, pursuant to a written contractual agreement or verbal agreement, that Concessionaire has made, or intends to imminently make, regarding the exclusive sale, rental, or use of any brand or product are subject to the approval of the City Manager's or his or her designee, at the City Manager's or designee's discretion.

21.5.4 Notwithstanding the above (including the rights given to Concessionaire in the preceding paragraph) but subject to the next succeeding paragraph, should the City enter into any exclusive endorsement and/or sponsorship agreement for products sold, rented, distributed, or otherwise used by the Concessionaire, then Concessionaire shall be required to sell, rent, distribute, or use ONLY the products under the City's exclusive endorsement and/or sponsorship agreement, and may not sell, rent, distribute, or otherwise use products produced by the City's exclusive sponsor's competitors in that product category. Concessionaire acknowledges that as of the date of this Agreement, the City has entered into an exclusive sponsorship agreements with PepsiCo Beverage Sales, LLC with respect to non-alcoholic beverage products and with Red Bull with respect to energy drinks (collectively, "Existing City Sponsorship Agreements") which grant exclusive pouring rights at City facilities, including the Concession Area, in the following beverage categories: Pepsi Cola (soda, water, juice, isotonics, protein, kombucha, iced tea, iced coffee, etc., but excluding hot coffee (dispensed), hot tea and hot cocoa) and (Red Bull) energy drinks. Accordingly, (i) Concessionaire shall observe (and shall cause any subconcessionaires and/or subcontractors to observe) such exclusive pouring rights, (ii) Concessionaire shall not secure sponsorships in the soda, water, juice, isotonics, protein, kombucha, iced tea, iced coffee, etc., but excluding hot coffee (dispensed), hot tea and hot cocoa) or energy drink categories and (iii) Concessionaire shall not purchase any Beach and Pool Equipment or other equipment, products, goods or collateral materials or enter into any exclusive endorsement and/or sponsorship agreements that conflict with any Existing City Sponsorship Agreement. Further, Concessionaire may not secure endorsements/sponsorships involving the following categories: tobacco, vaping, firearms, intimate apparel, religious or political, gambling, prescription medication, intimate personal products (including male enhancement or feminine hygiene products) and any other category that is now or hereafter prohibited by federal law, state law, the Miami-Dade County Code or the City Code.

21.5.5 Notice of any new exclusive endorsement/sponsorship agreement entered into by the City for any products sold, rented, distributed, or otherwise used by the Concessionaire within the Concession Area shall be provided by the City to the Concessionaire ("New City Sponsorship Agreements", and together with the Existing City Sponsorship Agreements, the "City Sponsorship Agreements") at least sixty (60) days prior to the commencement of any such exclusive endorsement/sponsorship agreement by the City (the "City Notice").

21.5.6 The City also acknowledges that, prior to receipt of the City Notice by Concessionaire of any New City Sponsorship Agreements, as provided in this **Subsection**

21.5, Concessionaire may have purchased, for example, certain Beach and Pool Equipment (including, without limitation, as defined herein, beach chairs, lounge chairs, pads, umbrellas, and sun canopies) or other equipment, products, goods or collateral materials for use in the Concession Areas and to provide the services contemplated under this Agreement that reflect logos or other branding that may be deemed to be a competitive (or otherwise prohibited) product under one of the aforestated proposed exclusive endorsement and/or sponsorship agreements that the City may seek to enter into during the Term (for purposes of this **Subsection 21.5** only, such branded Beach and Pool Equipment and other equipment, products, goods or collateral materials required to be provided by Concessionaire hereunder that has been purchased by Concessionaire for the Concession Area, and to provide the services contemplated under this Agreement to be provided in the Concession Area, shall be referred to collectively as "Concessionaire Branded Equipment and Goods"). The City also recognizes that, prior to receipt of the City Notice by Concessionaire of any exclusive endorsement and/or sponsorship agreement, Concessionaire may have entered into exclusive endorsement and/or sponsorship agreements for certain goods and services offered in the Concession Area (collectively, "Concessionaire Sponsorship Agreements"). Concessionaire Branded Equipment and Goods and Concessionaire Sponsorship Agreements shall only be exempt from the requirements of **Subsection 21.5** provided that PRIOR TO the receipt by Concessionaire of the City Notice of its intent to enter into the particular exclusive endorsement and/or sponsorship agreement: (i) the particular Concessionaire Branded Equipment and Goods were already approved by the City Manager or his/her designee, and are referenced in a corresponding exhibit to this Agreement, as the same may be amended in accordance with this Agreement; (ii) as to any new Concessionaire Branded Equipment and Goods which has not been acquired by Concessionaire as of the date of receipt of such City Notice, the Concessionaire shall have entered into a binding contract with a term not exceeding three (3) years for the purchase of such Concessionaire Branded Equipment PRIOR TO the date of receipt by Concessionaire of the City Notice relating to the category in question, (iii) as to any Concessionaire Sponsorship Agreements, Concessionaire shall have entered into a binding contract with a term not exceeding three (3) years PRIOR TO the date of receipt by Concessionaire of the City Notice relating to the category in question and (iv) following the expiration of the agreements referenced in subclauses (ii) and (iii), Concessionaire shall not renew any such agreements that conflict with City Sponsorship Agreements, and upon the expiration of such agreements, Concessionaire shall comply with all obligations pursuant to all City Sponsorship Agreements. As to clauses (ii) and (iii), the City Manager or his/her designee may request such documentation as they deem reasonably necessary including, without limitation, the endorsement and/or sponsorship agreements in question, sales slips, invoices, receipts, sales contracts, purchase orders, etc., evidencing proof of Concessionaire's purchase of the particular Concessionaire's Equipment.

21.5.7 It is further understood that, should the City enter into any exclusive endorsement/sponsorship agreement that includes the public beachfront concessions that are the subject of this Agreement, the City shall have the right to place, or allow the placement of, any signage, equipment, logos or graphics, as same may be approved by the City's Planning Department, or the City Manager or his/her designee, on any or all of the following Concessionaire's equipment and facilities: food and beverage dispensing facilities, carts, kiosks, storage containers, Beach and Pool Equipment, and Vehicles; provided, however, that the (i) cost and expense to place any such approved signage, equipment, logos or graphics, and to remove such approved signage, equipment, logos or graphics, shall not be the responsibility of the Concessionaire; and (ii) the City shall

use, or cause to be used, reasonable care in the placement and removal of such signage, equipment, logos or graphics and, in the event that any of the aforestated Concessionaire's Equipment is/are damaged as a result of the placement or removal of such approved signage, equipment, logos, or graphics, then the City shall be responsible for repairing any such damage, to the extent of restoring the equipment or facility(ies) to the condition it/they existed prior to the placement or removal (as the case may be) of the approved signage, equipment, logos, or graphics, reasonable wear and tear excepted. Concessionaire shall endeavor to ensure that any such signage, equipment, logos or graphics are not unduly obscured or damaged. Notwithstanding the foregoing, it is acknowledged and agreed that Concessionaire's signage, equipment, logos and/or graphics shall not be required to be removed and shall not be obscured by the City's signage, equipment, logos or graphics. For purposes of clarification, this Subsection 21.5.7 is only intended to apply to the Beachfront Area.

21.5.8 The City may desire to promote Miami Beach through, among other things, co-branding with Concessionaire. Concessionaire agrees to reasonably cooperate with the City in the co-branding effort and to incorporate the City's name and/or logo on certain Beach and Pool Equipment, if requested, and in the manner to be determined, by the City in consultation with Concessionaire, with respect to any new Beach and Pool Equipment acquired by Concessionaire after the date of the approval of the Beach and Pool Equipment pursuant to Subsection 3.1.1 by the City Manager or his or her designee. In conjunction with the co-branding rights granted under this Agreement, the City grants to Concessionaire a limited, nonassignable, nonexclusive, royalty-free, revocable license during the Term to use the City's name, trade name, trademarks and/or logo to be provided by the City (the "City Marks") solely for the purpose of co-branding as set forth herein, provided, however, that the license granted herein shall not include the right to use the City Marks with respect to the sale of any merchandise, novelties, or other products without the prior written consent of the City Manager or his or her designee. The Concessionaire acknowledges and agrees that the license granted hereunder transfers no right, title or interest in and to the City Marks except the limited license hereunder and that any use of the City Marks by Concessionaire and the goodwill associated with such use will inure to the City's benefit. Prior to use of the City Marks, the Concessionaire shall submit all such material to the City Manager or his or her designee for its prior approval. The Concessionaire agrees to use the City Marks in identical form to the specimens of the City Marks to be provided by the City without any alteration therefrom. The City represents and warrants to the Concessionaire that the City Marks do not and will not infringe any copyrights, trademarks, rights of privacy or any other rights of others and hereby indemnifies and holds harmless Concessionaire with respect thereto. No license is granted hereunder for the use of the Marks for any purpose other than strictly in accordance with this Agreement. Upon any termination or expiration of this Agreement, the Concessionaire shall immediately cease all use of the City Marks, provided, that, the Concessionaire shall have the right to continue to use photographs and other images containing the City Marks for archival and promotional purposes on its website and social media platforms.

21.5.9 City acknowledges that Concessionaire and its related entities are the sole and exclusive owners of the trademarks, service marks, trade names and logos used at or in connection with the Concessionaire's Services (together, the "Concessionaire's Marks"). City agrees that it will not make any use of the Concessionaire's Marks except with Concessionaire's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed and that any use of the Concessionaire's Marks by City and the

goodwill associated with such use will inure to Concessionaire's benefit. City acknowledges and agrees that it will not acquire any interest in the Concessionaire's Marks or the goodwill associated with the Concessionaire's Marks by virtue of this Agreement or City use of the Concessionaire's Marks. The Concessionaire represents and warrants to the City that the Concessionaire's Marks do not and will not infringe any copyrights, trademarks, rights of privacy or any other rights of others and hereby indemnifies and holds harmless the City with respect thereto. Upon any termination or expiration of this Agreement, the City shall immediately cease all use of the Concessionaire's Marks, provided, that, the City shall have the right to continue to use photographs and other images containing the Concessionaire's Marks for archival and promotional purposes on its website and social media platforms.

SECTION 22. NO IMPROPER USE.

The Concessionaire will not use the Concession Area, or any facilities, furnishings or equipment thereon, for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted (in any such case, "Improper Acts"). In addition, in the event that the Concessionaire has actual knowledge of any person engaged in Improper Acts, it shall notify the Miami Beach Police Department. Without limiting the Concessionaire's indemnity obligations pursuant to Section 17 and other provisions of this Agreement, the Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, officials, employees, contractors, and agents, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any negligent act or omission of the Concessionaire, or any officers, directors, employee, contractors (including any Subconcessionaire) or agents regarding the Concession Area in violation of the first sentence of this **Section 22**. In the event of any violation by the Concessionaire or if the City Manager or his/her authorized representatives shall deem any conduct on the part of the Concessionaire to be objectionable or improper, the City Manager shall have the right to suspend the Concession Operations should the Concessionaire fail to correct any such violation, conduct, or practice, to the reasonable satisfaction of the City Manager, within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice, provided, that, if such violation is not susceptible to be cured within such twenty-four (24) hour period, then Concessionaire shall not be subject to suspension provided that it commences to cure such violation within such 24-hour period and completes such cure with all due diligence promptly, but in no event shall such extended cure period exceed seventy-two (72) hours from the time of written notice thereof. Subject to the cure period, any such suspension will continue until the violation is cured. The Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the reasonable satisfaction of the City Manager or his or her designee. Notwithstanding the foregoing, Concessionaire is not liable for any acts or omissions of the public except to the extent caused by the negligence or willful misconduct of Concessionaire.

SECTION 23. NOTICES.

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Concession Area, each such notice, demand, request, consent, approval or other communication shall be in writing

(whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served in person with a signed receipt, by certified or registered U.S. Mail, return receipt requested, or by a recognized national courier service, postage prepaid in all instances, addressed as follows:

If to Concessionaire	Boucher Brothers Pier Park, LLC 1451 Ocean Dr Suite 205 Miami Beach, Florida 33139 Attn: Email:
With copy to:	Abigail C. Watts-FitzGerald Watts-FitzGerald Law, PLLC 2800 Ponce de Leon Boulevard, Suite 1400 Coral Gables, Florida 33134 Email:
If to City:	City Manager City of Miami Beach 1700 Convention Center Drive Miami Beach, FL 33139
With copies to:	Asset Manager City of Miami Beach 555 17 Street Miami Beach, Florida, 33139
And to:	City Attorney City of Miami Beach 1700 Convention Center Drive Miami Beach, FL 33139

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.

SECTION 24. LAWS.

24.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

24.2 Prohibitions Regarding Sale or Use of Expanded Polystyrene Food Service Articles, Single Use Plastic Beverage Straws, and Single- Use Plastic Stirrers.

24.2.1 Concessionaire hereby agrees and acknowledges that, pursuant to Section 82-7 of the City Code, as may be amended from time to time, Concessionaire shall not sell, use, provide food in, or offer the use of expanded polystyrene food service articles (as defined in City Code Section 82-7) in the Concession Areas. A violation of this section shall be deemed a default under the terms of this Agreement, subject to expiration of any applicable notice and cure period. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Concessionaire.

24.2.2 Additionally, Concessionaire agrees and acknowledges that, pursuant to Section 82-8 of the City Code, as may be amended from time to time, Concessionaire shall not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers (as defined in City Code Section 82-8) in the Concession Areas. A violation of this section shall be deemed a default under the terms of this Agreement, subject to expiration of any applicable notice and cure period. Notwithstanding the above, the requirements of Section 82-8 shall not restrict Concessionaire from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

24.3 Equal Employment Opportunity.

Neither Concessionaire nor any Affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital or familial status or age. Concessionaire will make good faith efforts to utilize minorities and females in the work force and in correlative business enterprises.

Concessionaire and any Affiliate of Concessionaire shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.S(a) and 60-741.S(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

24.4 No Discrimination.

Concessionaire shall comply with City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services, or with respect to any use, service, maintenance, or operation within the Concession Area, on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, or age, ancestry, height, weight, domestic partner status, labor organization membership, or political affiliation. All services offered in the Concession Areas shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the facilities.

SECTION 25. EARLY TERMINATION RIGHT IN EVENT OF FINANCIAL EMERGENCY .

25.1 For purposes of this Section 25, the term "Financial Emergency" shall mean the occurrence of any of the following conditions:

(a) The City shall become unable to pay its debts as they become due (including operating expenses, short-term loans, bond debt service or other long-term debt payments);
(b) The City shall fail to pay uncontested claims from creditors within 90 days after the claim is presented;
(c) The City shall fail to transfer at the appropriate time, due to lack of funds:
    i. Taxes withheld on the income of employee; or
    ii. Employer and employee contributions for federal social security or any pension, retirement or benefit plan of any employee; or
(d) Failure for one pay period to pay, due to lack of funds,
    i. Wages and salaries owed to employees; or
    ii. Retirement benefits owed to former employees

For purposes of this Section 25, the term "Qualified Appraiser" means an individual with verifiable education and experience in appraising the future income stream of businesses that are the same as, or substantially similar to, the businesses comprising the Concession Operations, and who has a designation awarded by a generally recognized professional appraiser organization on the basis of demonstrated competency.

25.2 If a Financial Emergency occurs and/or is continuing and the City Commission tentatively approves (i.e., subject to any other required approvals, including a voter referendum) a sale of the City property that encompasses the Concession Area (the "Concession Area Property"), then the City shall have the right to terminate this Agreement upon not less than one hundred eight (180) days' prior written notice to Concessionaire ("Early Termination Notice"), provided the (a) date specified in such Early Termination Notice shall not be earlier than the first day of the sixth (6^{th}) Agreement Year and (b) City shall pay Concessionaire the Early Termination Payment, determined in accordance with the following provisions of this Section 25.

25.3 The Early Termination Payment is intended to compensate Concessionaire for the loss of anticipated profits that it would derive from the Concession Operations for the time remaining in the Term from and after the early termination date specified in the Early Termination Notice, less the fair market value of any FF&E the Concessionaire elects to remove from the Concession Area ("FF&E Value") plus the reasonable costs incurred by Concessionaire in connection with the early

termination of the Term that would not be payable by Concessionaire at the expiration of the Term, such as reasonable attorneys' fees and costs and the fees payable to any appraiser engaged by Concessionaire, that are supported by documentation to be provided to the City ("Early Termination Expenses"). Following the Concessionaire's receipt of the Early Termination Notice, the City and Concessionaire shall endeavor to reach a mutual agreement as to the Early Termination Payment. If the parties cannot reach agreement within ten (10) Business Days from the Concessionaire's receipt of the Early Termination Notice , the Early Termination Payment shall be determined as follows. The City and Concessionaire each shall appoint one (1) Qualified Appraiser (as defined below) within ten (10) Business Days after a written request for appointment of appraisers has been given by either the City or Concessionaire to the other. If either the City or Concessionaire fails to appoint its appraiser within such ten (10) Business Day period, such appraiser shall be appointed by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida upon application of the other. Each such Qualified Appraiser shall appraise the anticipated lost profits that Concessionaire would derive from the Concession Operations for the time remaining in the Term from and after the early termination date specified in the Early Termination Notice, less the FF&E Value plus Early Termination Expenses, and submit his or her written report setting forth the appraised Early Termination Payment within thirty (30) days after the appointment of both such Qualified Appraisers. If the higher appraised value of such two (2) appraisals is not more than one hundred ten percent (110%) of the lower appraised value, the fair market rental value of the premises shall be the average of the two (2) appraised values, but not more Ten Million Dollars ($10,000,000), adjusted annually during the Term commencing on the first anniversary of the Commencement Date by an amount equal to the percentage change in the Consumer Price Index, All Urban Consumers (CPI – U.S. City Average All Items; base year 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics, per Agreement Year then remaining in the term (pro-rated for any partial Agreement Year) less the FF&E Value plus the Early Termination Expenses (the "Early Termination Payment Cap"). If the higher appraised value is more than one hundred ten percent (110%) of the lower appraised value, the City and Concessionaire Tenant shall agree upon and appoint a neutral third Qualified Appraiser within ten (10) Business Days after both of the first two (2) appraisals have been submitted to the City and Concessionaire. If the City and Concessionaire do not agree and fail to appoint such neutral third Qualified Appraiser within such ten (10) Business Day period, such neutral third Qualified Appraiser shall be appointed by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida upon application of either the City or Concessionaire. The neutral third Qualified Appraiser shall appraise the anticipated lost profits that Concessionaire would derive from the Concession Operations for the time remaining in the Term from and after the early termination date specified in the Early Termination Notice and submit his or her written report setting forth the appraised Early Termination Payment to the City and Concessionaire within thirty (30) days after his or her appointment (or as soon thereafter as practicable). The Early Termination Payment shall be the average of the two (2) appraised values in such three (3) appraisals that are closest to each other (unless the differences are equal, in which case the three (3) appraised values shall be averaged), but in any case, not more than the Early Termination Cap. The Early Termination Payment determined in accordance with this paragraph, shall be conclusive and binding upon the City and Concessionaire.

25.4 Notwithstanding the date specified as the termination date in the City's Early Termination Notice, Concessionaire shall not be required to quit and surrender the Concession Area until such time as the Early Termination Payment amount has been agreed upon or determined through the appraisal process set forth in the foregoing provisions. Concessionaire shall surrender the Concession Area in as good condition and repair as the Concession Area was in as of the date of the Early Termination Notice. For the avoidance of doubt, Concessionaire shall remain liable for its responsibilities associated with Hazardous Materials pursuant to Section 17.

25.5 The Early Termination Payment shall be made by the City at the closing of the Concession Area Property sale transaction.

SECTION 26. MISCELLANEOUS.

26.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or agency relationship between the City and Concessionaire, it being acknowledged that each of the parties is acting as an independent contractor hereunder.

26.2 Modifications.

With the sole exception of incorporation of, or amendments to, the exhibits to this Agreement in accordance with the terms of this Agreement, this Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission, except where such authority has been expressly provided herein to the City Manager or his or her designee.

26.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to the subject matter hereof and Concessionaire's operations, as contemplated herein.

26.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

26.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

26.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

26.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any Person or circumstance is, to any extent, finally determined by a court of competent jurisdiction to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall be valid and enforceable to the fullest extent permitted by law.

26.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, subject to reasonable prior notice, have the right to enter into and upon any and all parts of the Concession Areas for the purposes of examining the same for any reason relating to the obligations of the parties to this Agreement.

26.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that Concessionaire is a concessionaire and not a lessee; and that the Concessionaire's right to operate the Concession Operations shall continue only so long as this Agreement remains in effect.

26.10 **Use of Beach.**

The beach is for the use and enjoyment of the public, for recreation and other public purposes and the public's right to such use shall not be infringed upon by any activity of the Concessionaire. Upon execution of this Agreement, Concessionaire acknowledges that all of the beaches are public and, as such, concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the beachfront. The Concessionaire will conduct its Beachfront Operations so as to maintain a reasonably quiet and tranquil environment for the adjacent area and shall make no public disturbances.

26.11 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the Concession Operations contemplated herein in a manner so as to show no preference for other concession operations/facilities (e.g., particularly concession operations behind private property along the City's beachfront) owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Concession Agreement.

26.12 Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or

all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

26.13 Procedure for Approvals and/or Consents.

In each instance in which the approval or consent of the City Manager or his/her designee is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or his/her designee by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or his/her designee is allowed or required in this Agreement, Concessionaire shall send to the City Manager a written request for approval or consent (the "Approval Request"). The City Manager or his/her designee shall use good faith efforts to respond to the Approval Request within sixty (60) days from the date of such Request (i.e. to provide written notice to Concessionaire approving of, consenting to or disapproving of the Request) unless a different time period is provided in this Agreement as to the specific request. However, except as otherwise provided in this Agreement, the City Manager or his/her designee's failure to consider such Request within this time provided shall not be deemed a waiver, nor shall Concessionaire assume that the Request is automatically approved and consented to. The Subsection shall not apply to approvals required herein by the Mayor and City Commission. Notwithstanding the foregoing, with respect to the approvals by the City Manager (or his or her designee) required for the Preliminary Plans and Specifications pursuant to Subsection 7.1.1 and the Plans and Specifications pursuant to Subsection 7.1.3, if the City Manager fails to grant or deny its consent within the twenty (20) Business Day period specified, the Concessionaire may transmit a second request for approval bearing the following legend at the top of the first page thereof, set forth in capital letters and in a type size not less than 14 point:

FAILURE TO RESPOND TO THIS SECOND REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF THIS NOTICE (WHICH CONSTITUTES THE TIME PERIOD PROVIDED IN THE CONCESSION AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND BOUCHER BROTHERS PIER PARK, LLC) SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [____] [***FILL IN APPLICABLE SECTION***] OF SUCH CONCESSION AGREEMENT.

26.14 No Waiver.

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement. Further, nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police, regulatory or governmental power.

26.15 No Third Party Beneficiary.

Except as otherwise expressly provided herein, nothing in this Agreement shall confer

upon any person or entity, including, but not limited to Subconcessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

26.16 Concessionaire's Compliance with Florida Public Records Law

26.16.1. Pursuant to Section 119.0701 of the Florida Statutes, if the Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:

(1) Keep and maintain public records required by the City to perform the service;
(2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Concessionaire does not transfer the records to the City;
(4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform the service. If the Concessionaire transfers all public records to the City upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

26.16.2 Request for Records; Noncompliance.

(1) A request to inspect or copy public records relating to the City's contract for services under this Concession Agreement must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
(2) Concessionaire's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate this Agreement; (2) avail itself of the remedies set forth under this Agreement; and/or (3) avail itself of any available remedies at law or in equity.
(3) A Concessionaire who fails to provide the public records to the City within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

26.16.3 Civil Action.

(1) If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services under this Concession

Agreement, the court shall assess and award against the Concessionaire the reasonable costs of enforcement, including reasonable attorney fees, if:

a. The court determines that the Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and
b. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Concessionaire has not complied with the request, to the City and to the Concessionaire.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Concessionaire at the Concessionaire's address listed on its contract with the City or to the Concessionaire's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Concessionaire who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

26.17 City Inspector General.

(a) Pursuant to section 2-256 of the Code of the City of Miami Beach, the City has established the office of the inspector general which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The office of the inspector general is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the inspector general has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. 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, bid specifications, (bid/proposal) submittals, activities of the Concessionaire, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the

contract documents and to detect fraud and corruption.

(c) Upon ten days' written notice to the Concessionaire, the Concessionaire shall make all requested records and documents available to the inspector general for inspection and copying. The inspector general is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including, but not limited to, project design, bid specifications, (bid/proposal) submittals, activities of the Concessionaire, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(d) The inspector general shall have the right to inspect and copy all documents and records in the Concessionaire's possession, custody or control which in the inspector general'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 from and with successful subconcessionaires, contractors, subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change 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.

(e) The Concessionaire shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

(1) If this contract is completely or partially terminated, the Concessionaire shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

(2) The Concessionaire shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this section shall apply to the Concessionaire, its officers, agents, employees, subconcessionaires, contractors, subcontractors and suppliers. The Concessionaire shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Concessionaire in connection with the performance of this contract.

(g) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Concessionaire or third parties and does not create rights in any third parties.

26.18 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Agreement as to both the City and the Concessionaire including, but not limited to, the times within which the Concessionaire must commence and complete construction of the Work and commence the Concession Operations, but subject to Unavoidable Delays.

SECTION 27. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the operation and management of the Concession Area(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of $100,000.00. Concessionaire hereby expresses its willingness to enter into this Agreement with a $100,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the City's entering into this Agreement, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of $100,000.00, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28. Notwithstanding any other provision herein to the contrary, Concessionaire shall not be entitled payment or compensation of any kind from the City for indirect, incidental, punitive, exemplary or consequential damages of any kind or nature.

SECTION 28. GOVERNING LAW AND VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

SECTION 29. WAIVER OF JURY TRIAL.

CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HEREINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA.

SECTION 30. REPRESENTATIONS AND WARRANTIES OF CONCESSIONAIRE.

Concessionaire represents and warrants that Concessionaire is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Florida and has full power and authority to execute, deliver and perform this Agreement. This Agreement and all other instruments and agreements required to be delivered by Concessionaire pursuant to this Agreement are, or will when executed and delivered, be duly authorized, executed and delivered by Concessionaire and constitute the legal, valid and binding obligations of Concessionaire enforceable in accordance with their respective terms. None of the execution, delivery or performance of this Agreement, or any instrument or agreement required to be delivered by Concessionaire pursuant hereto, nor the consummation of the transactions contemplated hereby or thereby, is prohibited by, or requires Concessionaire to obtain additional consents, approvals or authorizations of, or notices to or filings or registrations with, any further Person(s) having jurisdiction over Concessionaire, other than those that have been obtained prior to the date hereof. The execution and delivery by Concessionaire of this Agreement and the performance by Concessionaire of its obligations hereunder do not and will not conflict with, or result in a breach of or a default or violation under any provision of any governing document of Concessionaire, any

material contract or agreement to which Concessionaire is a party or any applicable Requirement or decree, judgment, regulation, order or rule of any Governmental Authority having jurisdiction over Concessionaire or to Concessionaire's knowledge, and except as otherwise provided in this Agreement, the Concession Area.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

PASSED AND ADOPTED THIS _____ day of _____, 2023.

Attest:

_____

CITY CLERK

_____

MAYOR

Witness:

BOUCHER BROTHERS PIER PARK, LLC

_____

_____

Signature

_____

_____

Name and Title of Signatory

EXHIBIT LIST

Exhibit 1.0 Concession Area

Exhibit 1.1 Form of Confirmation of Commencement Date Certificate

Exhibit 1.3 Form of Assignment of Construction Agreement and Consent

Exhibit 1.4.3 Budget

Exhibit 2.2 Site Plan

Exhibit 3.1.1 Photos and Specifications of Beach and Pool Equipment

Exhibit 3.1.4 Design, Type Material and Color of any and all Beach and Pool Equipment

Exhibit 3.1.5 Beachfront Area Site Plan (to reflect placement and quantity of Beach and Pool Equipment

Exhibit 3.2.2 Material Terms of Major Food Group, LLC Restaurants Subcontract

Exhibit 3.2.3 Menu and Price Schedule for Restaurants

Exhibit 3.4.3 Health and Wellness Center Offerings and Rate Card

Exhibit 3.5.1 Beach-Related Sundries Offerings and Rate Card

Exhibit 3.6.2 Retail Pavilion Offerings and Fees to be Charged to Subconcessionaires

Exhibit 3.7.2 Plan for Removal and Storage of Beach and Pool Equipment and Dispensing Facilities

Exhibit 3.9 Hurricane Preparedness Plan

Exhibit 3.12 Value-Add Enhancements/Public Benefits

Exhibit 7.2 Timeline

Exhibit 7.4 Construction Insurance Requirements

Exhibit 7.6 Construction Agreements Required Clauses

Exhibit 10.9 Rules and Regulations for Driving on Beach

Exhibit 13.1 Signage Criteria

Exhibit 14 Insurance Requirements

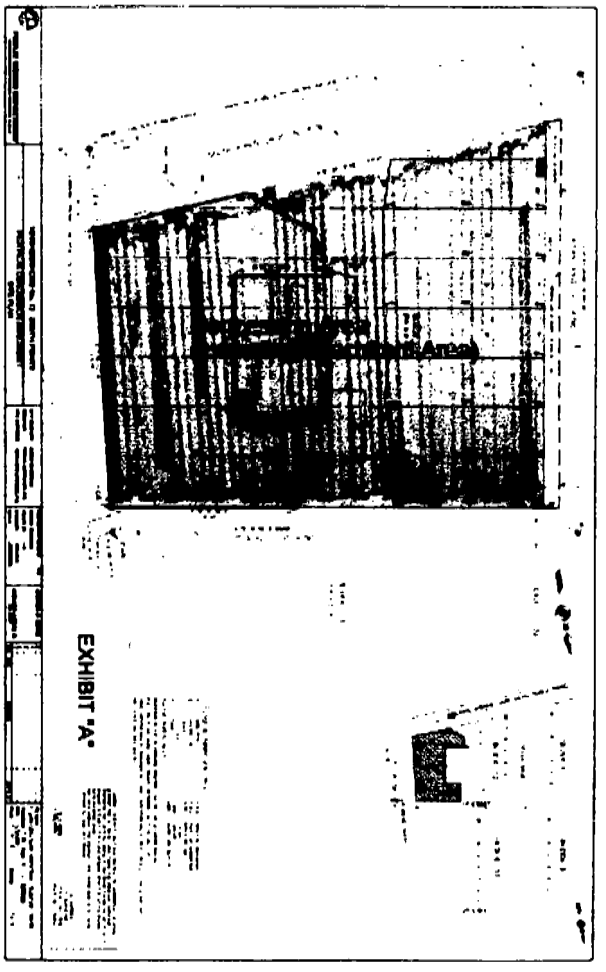
Exhibit 14.1 Liability Insurance Requirements

Exhibit 14.2 Property Insurance Requirements

Exhibit 14.3 Other Insurance Requirements

Exhibit 17.5 Approved Beachfront Area and Pool Area Signage

Exhibit 1.0
Concession Area (sketch to be replaced with more accurate sketch and legal)



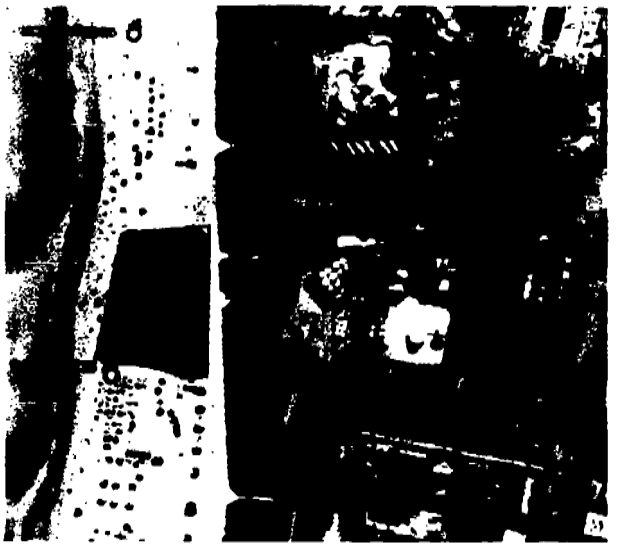


EXHIBIT 1.1
FORM OF CONFIRMATION OF COMMENCEMENT DATE CERTIFICATE

THIS CONFIRMATION OF COMMENCEMENT DATE CERTIFICATE (this "**Certificate**") is made as of this ____ day of _____, 202__ by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation duly organized and existing under the laws of the State of Florida (the "**City**"), and BOUCHER BROTHERS PIER PARK, LLC, a Florida limited liability company ("**Concessionaire**" and together with the City, each a "**Party**" and collectively, the "**Parties**").

WHEREAS, the Parties entered into that certain Concession Agreement For Management And Operation Of A High-End Beach Establishment by and between the City and Concessionaire dated as of _____, 2023 (the "**Concession Agreement**") pursuant to which this Certificate is delivered.

WHEREAS, the City and Concessionaire desire to confirm the Commencement Date and the Expiration Date of the Concession Agreement as set forth below.

NOW, THEREFORE in consideration of the foregoing, and of the mutual covenants contained herein, the Parties hereby agree as follows:

1. Recitals and Capitalized Terms. The recitals set forth above are true and correct and are incorporated herein by this reference. Capitalized terms used but not defined in this Certificate have the meanings set forth in the Concession Agreement.

2. Confirmation of Dates.

(a) The Commencement Date is _____, 202__.

(b) The Expiration Date is the date that is nine (9) years and three hundred sixty-four days from the Commencement Date or _____, 202__.

3. Except for the certifications contained in this Certificate, all terms of the Concession Agreement shall remain unchanged and are hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the City and Concessionaire have duly executed this Certificate as of the date and year first written above.

THE CITY:	**CONCESSIONAIRE:**
CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida	BOUCHER BROTHERS PIER PARK, LLC, a Florida limited liability company
By:_____	By:_____
Name:	Name:
Title:	Title:

Exhibit 1.3
FORM OF ASSIGNMENT OF CONSTRUCTION AGREEMENTS AND CONSENT

ASSIGNMENT OF CONSTRUCTION AGREEMENTS

FOR VALUE RECEIVED, the undersigned **BOUCHER BROTHERS PIER PARK, LLC**, a Florida limited liability company ("Concessionaire"), as of this ____ day of _____, 202__ (the "Effective Date") assigns to **THE CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City"), pursuant to that certain Concession Agreement by and between the City and Concessionaire dated as of _____, 2023 (the "Concession Agreement"), all of Concessionaire's right, title and interest under all existing and future general contractor's agreements, architect's agreements, plans and specifications, engineers' agreements, and any other agreements for the provision of labor, materials, services or supplies, as amended, between Concessionaire and any other person or entity (collectively, the "Construction Agreements") relating to the construction of the Work, as defined and described in the Concession Agreement. The Construction Agreements include, but are not limited to, that certain [Construction Contract] between Concessionaire and _____, a _____ ("Contractor") dated _____, 202__, that certain [Architect Agreement] between Concessionaire and _____, a _____ ("Architect"), dated _____, 202__ and that certain [Engineering Agreement] between Concessionaire and _____, a _____ ("Engineer") dated _____, 202__.

THIS ASSIGNMENT OF CONSTRUCTION AGREEMENTS ("Assignment") constitutes a present and absolute assignment to the City as of the Effective Date; provided, however, that for so long as no Event of Default (as defined in the Concession Agreement) has occurred or is continuing under the Concession Agreement, as applicable, and until the earlier of (i) termination of the Concession Agreement, (ii) City's exercise of its remedy for an Event of Default as provided in the Concession Agreement, or (iii) completion of the Work in accordance with the Concession Agreement ("Final Completion"), the City grants Concessionaire a license to use all Construction Agreements for completion of the Work in accordance with the Concession Agreement. Upon the occurrence of (a) an Event of Default under the Concession Agreement, which continues beyond any applicable notice and cure period or (b) the termination of the Concession Agreement, or (c) Final Completion, the City may, in the City's sole discretion, give notice to any of Contractor, Architect, Engineer and/or any other party to a Construction Agreement of the City's intent to enforce the rights of Concessionaire under the applicable Construction Agreement and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Concessionaire acknowledges that solely by accepting this Assignment, the City does not assume any of Concessionaire's obligations under the Construction Agreements.

Concessionaire represents and warrants to the City, as of the Effective Date, that (a) all Construction Agreements entered into by Concessionaire are in full force and effect and are enforceable in all material respects in accordance with their terms and to Concessionaire's knowledge, no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to any of the Construction Agreements, (b) Concessionaire has delivered copies of all Construction Agreements to the City and such copies are true, complete and correct in all material respects as of the date of this Assignment, and (c) Concessionaire has not assigned any of Concessionaire's rights under the Construction Agreements to any person or entity. Concessionaire shall deliver to the City true, complete and correct copies of all Construction Agreements entered into after the date hereof, promptly upon execution thereof.

Concessionaire agrees (a) to pay and perform all obligations of Concessionaire under the Construction Agreements, (b) to enforce in Concessionaire's reasonable business judgement the full and prompt performance of all obligations of any other person or entity under the Construction Agreements, (c) [intentionally omitted], and (d) not to further assign, for security or any other purposes, Concessionaire's rights under the Construction Agreements without the City's prior written consent.

Unless otherwise defined herein, capitalized terms used in this Assignment shall have the meanings attributed to such terms in the Concession Agreement. This Assignment shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of laws. Except as otherwise expressly provided under the terms and conditions herein, the terms of this Assignment shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto. All exhibits, schedules, riders and other items attached hereto are incorporated into this Assignment by such attachment for all purposes.

To facilitate execution, this Assignment may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all parties required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. This Assignment may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif"). The effectiveness of any such documents and signatures shall have the same force and effect as manually-signed originals and shall be binding on all parties to this Assignment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Concessionaire intending to be legally bound has executed this Assignment as of the date first written above.

CONCESSIONAIRE:

BOUCHER BROTHERS PIER PARK, LLC,
a Florida limited liability company

By:_____
Name:
Title:

CONSENT

THIS CONSENT ("Consent") is made by _____, a _____ ("Contractor"), this _____ day of _____, 202__, to and for the benefit of THE CITY OF MIAMI BEACH, FLORIDA, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City"), with agreement by **BOUCHER BROTHERS PIER PARK, LLC**, a Florida limited liability ("Concessionaire").

Contractor and Concessionaire have entered into that certain _____ dated _____, 202__ (the "Construction Agreement"), providing for [construction] [design] [engineering] of the Work in the Concession Area, as such terms are defined in that certain Concession Agreement by and between the City and Concessionaire dated as of _____, 202__ (the "Concession Agreement").

Concessionaire has assigned the Construction Agreement to the City pursuant to the Assignment of Construction Agreements (the "Assignment") to which this Consent is attached.

The City has required, as a condition of occupancy of the Concession Area and execution of the Work, that Contractor execute this Consent.

NOW THEREFORE, Contractor agrees as follows:

1. Contractor represents and warrants to the City, that the Construction Agreement is in full force and effect and is enforceable in all material respects in accordance with its terms and to Contractor's knowledge, no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to the Construction Agreement.

2. Contractor agrees that if, at any time, the City elects to undertake or cause the completion of construction of the Project in accordance with the Construction Agreement and gives Contractor written notice of such election (an "Election Notice"), then, so long as the City assumes and performs the payment obligations of Concessionaire under the Construction Agreement accruing from and after the date of the Election Notice, then Contractor shall continue to perform its obligations under the Construction Agreement in accordance with the terms thereof for the benefit and account of the City in the same manner as if performed for the benefit of account of Concessionaire in the absence of the Assignment. Unless and until the City expressly assumes the obligations of Concessionaire under the Construction Agreement (and then only to the extent the same arise from and after such assumption), the City shall not be a party to the Construction Agreement and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

3. Contractor further agrees that, in the event of a breach by Concessionaire of the Construction Agreement, Contractor will give written notice to the City at the address shown below its signature of such breach. Unless and until the City expressly assumes the obligations of Concessionaire under the Construction Agreement (and then only to the extent the same arise from and after such assumption), the City shall not be a party to the Construction Agreement and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

4.

a. Contractor agrees, notwithstanding anything to the contrary contained herein, that upon an Event of Default (as defined in the Concession Agreement) by Concessionaire resulting

in a termination of the Concession Agreement, or City's exercise of its remedy for an Event of Default as provided in the Concession Agreement, until and unless the City gives Contractor an Election Notice, the City, at its election, may terminate the Construction Agreement for any or no reason and the City shall not be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with the Construction Agreement.

b. [Additionally, if requested by the City in writing, Contractor will continue as the general contractor for construction of the Project for up to thirty (30) days after such termination or City's exercise of its remedy for an Event of Default under the Concession Agreement (the "Transition Period") on the same terms and conditions as set forth in the Construction Agreement, provided that Contractor is paid by the City in accordance the Construction Agreement for all work, labor and materials rendered pursuant to the Construction Agreement performed during the Transition Period.] [***APPLICABLE TO CONSTRUCTION CONTRACT***]

c. [Subject to Contractor's receipt of the payments prescribed by Section 4.b. above, Contractor will engage in reasonable, good faith efforts to cooperate with any other general contractor selected by the City in order to assure a smooth transition, including, without limitation, delivering to the City or its designee copies of all project records in Contractor's possession or control that Concessionaire is entitled to obtain under the terms of the Construction Agreement.] [***APPLICABLE TO CONSTRUCTION CONTRACT***]

5. Nothing in this Consent shall supersede or modify any provisions of the Construction Agreement as between Concessionaire and Contractor. By its joinder in the execution of this Consent, Concessionaire agrees that any action by Contractor in accordance with the terms hereof shall not constitute a violation by Contractor of any term of the Construction Agreement or of any obligation Contractor has or may have to Concessionaire. For instance, in the event the City terminates the Construction Agreement as provided in Section 4 hereof, Concessionaire shall remain liable for all amounts due Contractor in accordance with the applicable termination provisions of the Construction Agreement.

6. This Consent shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

7. **EACH OF THE UNDERSIGNED PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS UNDER OR ARISING IN CONNECTION WITH THIS CONSENT.**

8. Contractor warrants and represents that it has no knowledge of any prior assignment(s) of any interest in the Construction Agreement that remains in effect.

9. To facilitate execution, this Consent may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all parties required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. This Consent may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif"). The effectiveness of any such documents and signatures shall have the same force and effect as manually-signed originals and shall be binding on all parties to this Consent.

IN WITNESS WHEREOF, Contractor intending to be legally bound has executed this Consent as of the date first written above.

CONTRACTOR:

_____,
a _____

By:_____
Name:
Title:

Contractor's Address:
[_____]
[_____]
[_____]

CONCESSIONAIRE:

BOUCHER BROTHERS PIER PARK, LLC
a Florida limited liability company

By:_____
Name:
Title:

Concessionaire's Address:
[_____]
[_____]
[_____]

Exhibit 1.4.3
Budget

Description	$ Total	% Total
Hard Costs	14,932,386	56.9%
Kitchen Equipment	2,727,482	10.4%
Furniture, Fixtures & Equipment	6,730,000	25.7%
Soft Costs	1,837,052	7.0%
Total Construction Budget	26,226,920	100.0%

Exhibit 2.2
Site Plan

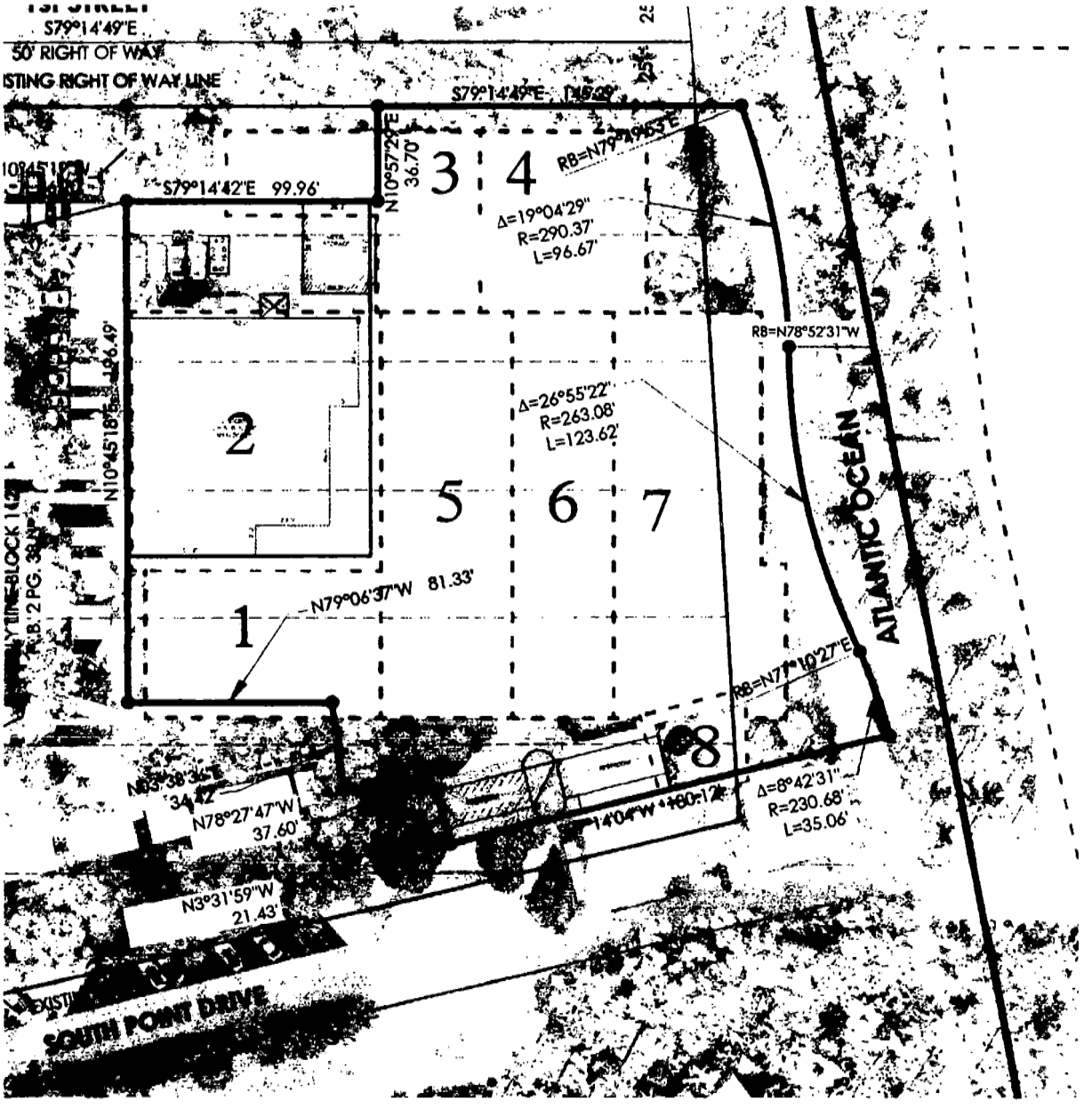


Exhibit 3.1.1
Photos and Specifications for Beach and Pool Equipment
(to be submitted for City's approval by April 1, 2024)

Exhibit 3.1.4
Design, Type, Material and Color of Beach and Pool Equipment
(to be submitted for City's approval by April 1, 2024)

Exhibit 3.1.5
Beachfront Area Site Plan (to reflect placement and quantity of Beach and Pool Equipment)
(to be submitted for City's approval by April 1, 2024)

Exhibit 3.2.2
Material Terms of Major Food Group, LLC Restaurants Subcontract
(to be submitted for City's approval by April 1, 2025)

Exhibit 3.2.3
Menu and Price Schedule for Restaurants
(to be submitted for City's approval by April 1, 2026)

Exhibit 3.4.3
Health and Wellness Center Offerings and Rate Card
(to be submitted for City's approval by April 1, 2026)

Exhibit 3.5.1
Beach-Related Sundries Offerings and Rate Card
(to be submitted for City's approval by April 1, 2026)

Exhibit 3.6.2
Retail Pavilion Offerings and Fees to be Charged to Subconcessionaires
(to be submitted for City's approval by April 1, 2026)

Exhibit 3.7.2
Plan for Removal and Storage of Beach and Pool Equipment and Dispensing Facilities

Beach Equipment

- Pending weather, demand, and Concessionaire shall begin closing periodically prior to sunset.
- All cushions will be removed from lounges (w/o touching the ground) and placed into storage container.
- All chairs will be retrieved and dispersed equally into stacks abutting Concession Facilities. (The height of stacks shall not exceed 8ft.)
- Cabanas will be removed and stored against the stacks of chairs.
- Each stack will be secured by a steel cable and locked.
- Concessionaire will first close and then remove all umbrellas and place into storage facilities.
- Concessionaire shall immediately dispose of all trash and debris within a 100ft radius of Concessionaire Area and do a final sweep to ensure that Concessionaire inventory and storage facilities are fully locked and secured.

Dispensing Facilities

- Dispense Facilities and Concession Huts will remain on the beach overnight and securely locked.
- If Food Truck and Trailers are permitted, these units will be removed daily with a City approved vehicle (unless otherwise approved by the City to remain out overnight).

Exhibit 3.9
Hurricane Preparedness Plan
(to be submitted for City's approval by April 1, 2024)

Exhibit 3.12
Value-Added Enhancements/Public Benefit Requirements

The following public benefits are to be provided by Concessionaire:

1. From the date the Beachfront Operations commence and throughout the Term, the Concessionaire shall have three (3) manual and one (1) motorized beach accessible wheelchairs, in good condition, available for use by patrons at the Beachfront Area.

2. From and after the Commencement Date, the Concessionaire shall:
    a. Make a payment on or before the Commencement Date and on or before each anniversary thereof in the amount of $250,000 in the first Agreement Year, increased by 5% each subsequent Agreement Year throughout the Term to provide funding for the salary and supplies for two (2) Police Officers and one (1) Park Ranger.
    b. Provide the City with an indoor air-conditioned space of not less than 250 square feet to be located in the Restaurant Building or the Pavilion Building for City use including but not limited to a police sub-station throughout the Term. If the City elects to not utilize the space as a police substation but for another City use, the Concessionaire will also make a one-time payment of $20,000 to the City to be used to defray costs of City-funded police supplies and equipment. Payment will be due no later than 60 days from the City's written notice or the Commencement Date, whichever is later.
    c. Develop an All-Access App (the "App") for City of Miami Beach residents that will be launched by or before the Commencement Date. Adult City of Miami Beach residents will have the opportunity to register to verify residency on the App (and shall be required to re-verify residency annually)(City of Miami Beach residents who are registered and verified are referred to as "Registered CMB Residents").
    d. During the Term, Registered CMB Residents will be entitled to "priority access" and certain discounts at the Concession Area and other beach concessions operated within the City of Miami Beach by Affiliates of Concessionaire pursuant to agreements with the City (as opposed to concessions operated pursuant to agreements with private parties) ("Affiliated Public Concession Areas") as follows:
        i. Registered CMB Residents will get priority access to reserve tables, lounge chairs, and/or other Beach and Pool Equipment at the Restaurants, the Pool Area, and the Beachfront Area. Priority access means that Concessionaire shall hold not less than thirty percent (30%) of its available seating at restaurants and/or Beach and Pool Equipment inventory at the Pool Area and Beachfront Area for Registered CMB Residents. The Restaurant seating and Beach and Pool Equipment set-asides that have not been reserved by Registered CMB Residents may be released for use by the general public five (5) days before the date in question. Priority access does not guarantee a reservation. Subject to the thirty percent (30%) hold, reservations will be based on availability.
        ii. Each Registered CMB Resident plus one guest will receive a 15% discount on the use of Pool and Beach Equipment (including but not limited to beach chairs, lounge chairs, day beds, cabanas, and umbrella rentals) at the Pool Area, the Beachfront Area and at Affiliated Public Concession Areas

iii. Each Registered CMB Resident plus one guest will receive a 15% discount to managed water activities at Affiliated Public Concession Areas and, if offered in the future with the City's prior approval, at the Beachfront Area.
iv. Each Registered CMB Resident plus one guest will receive a 10% discount for food and beverage charges for all dining outlets at the Concession Area as well as any food and beverage offerings at any Affiliated Public Concession Areas.

e. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $36,000 annually to defray costs of City-funded food services including but not limited to the Mobile Food Pantry Program.
f. Develop a partnership with Miami Beach Senior High School Culinary Arts Program (which may include interactive Zoom/Teams meetings with students, student site visits to the Restaurants and such other activities as the Concessionaire and the Miami Beach Senior High School administration shall agree upon).
g. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $30,000 annually to enable the City to make donations in equal amounts annually to all public schools located within the City of Miami Beach for the purchase of supplemental supplies, equipment, etc. in coordination with each school's principal.
h. Develop a calendar for twelve (12) special events per contract year for residents at the Concession Area. Events to be provided to City for review and approval.
i. Mechanically sift sand fifty-two (52) times per Agreement Year from Government Cut to 5th street.
j. Implement a daily (i.e., once per day) litter cleanup program along the beach from Government Cut to the north side of Douglas Park from the eastside of the dunes to the highwater mark and the beachwalk area directly behind Pier Park. Program to be provided to and approved by the City.
k. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $30,000 annually to defray costs of City-funded dune maintenance and/or restoration.
l. Organize twelve (12) litter cleanup events per year targeting areas such as waterways, islands, causeways, and streets. Events to be coordinated with and approved by the City.
m. Provide the City with a payment of $25,000 to provide funding towards improvements at the Washington Avenue Bark Park including drinking stations and additional trees.
n. Pay directly for the design, permitting, equipment purchase, and installation of sail shades to cover the Public Children's Playground on 13th and Ocean Drive in Lummus Park. City to approve the contractor.
o. Make a payment on or before the Commencement Date and on or before each anniversary thereof with a payment of $2,000 annually to provide funding towards the Victory Garden located at 226 Collins Avenue.
p. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $20,000 annually to defray costs of City-funded senior programs.

Exhibit 7.2
Timeline

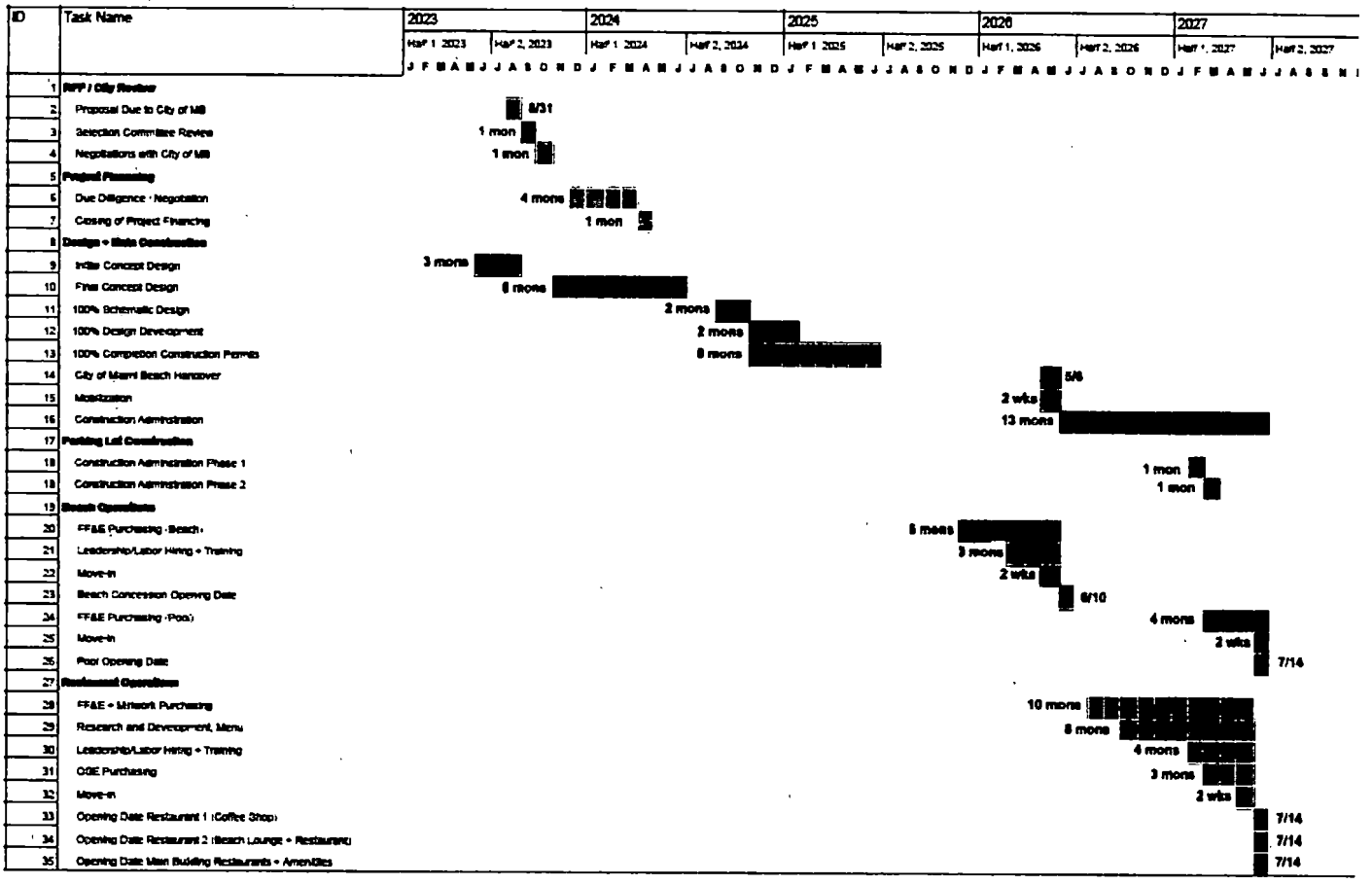


Exhibit 7.4
Construction Insurance Requirements

The insurance required by **Section 7.4** shall consist at least of the following:

(a) Builder's Risk Insurance (standard **"All Risk"** or equivalent coverage) in an amount not less than 100% of the insurable value of the Concession Area's completed structure(s), covering perils on an "All Risk" basis, including flood, earthquake, and windstorm, written on a completed value basis or a reporting basis, for property damage protecting Concessionaire, the City, and the general contractor performing such Construction Work (the "Work"), with a deductible payable at the sole responsibility of Concessionaire of not more than Fifty Thousand Dollars ($50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount), to include rental payment coverage from the date of projected completion and extending for at least twelve (12) months following such date of projected completion. Policy(s) must clearly indicate that underground structures (if applicable) and materials being installed are covered.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Concession Area in an amount not less than Five Million Dollars ($5,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Concessionaire of not more than Ten Thousand Dollars ($10,000), subject to adjustment for inflation.

(c) Commercial General liability insurance protecting against liability for bodily injury, death, property damage and personal injury. Such insurance shall (within the limits of the insurance required by Section 14 (***Exhibit 14***):

i. contain blanket contractual liability insurance covering written and oral contractual liability;

ii. contain contractual liability insurance specifically covering Concessionaire's indemnification obligations under Section 17, to the extent such indemnification obligation is for an insurable risk;

iii. contain independent contractors coverage;

iv. contain a notice of occurrence clause;

v. contain a knowledge of occurrence clause;

vi. contain an unintentional errors and omissions clause;

vii. contain coverage for suits arising from the use of reasonable force to protect persons and property;

viii. contain an endorsement providing that excavation and foundation work are covered and the "XCU" exclusions have been deleted;

ix. contain a waiver of completion and occupancy condition;

x. contain no exclusions unless specifically approved in each instance by Owner, other than the industry standard exclusions for projects of similar size and location;

xi. contain Products Liability/Completed Operations coverage; and

xii. provide for a deductible determined by Concessionaire, but not more than One Hundred Thousand Dollars ($100,000) per loss, subject to adjustment for inflation.

Exhibit 7.6
Construction Agreements Required Clauses

1. An agreement by the Contractor to provide, prior to the commencement of its portion of the Work, and maintain during the performance thereof, the insurance set forth in Section 7.4 of the Concession Agreement. Such Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including the City of Miami Beach, Florida (and any successor owner), as additional insureds (the "Certificate of Insurance"), shall be furnished to Concessionaire by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Construction Agreement. The Contractor shall secure an original Certificate of Insurance from each of its sub-contractors and/or suppliers with limits of liability equal to those carried by the Contractor;

2. "Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor owner), and their respective elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the [Work].";

3. "To the fullest extent permitted by law, except if cause by the gross negligence or willful misconduct of the City, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys' fees and disbursements (collectively, "Expenses"), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the [Work], or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the [Work], or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the Work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in connection with the Work, or anyone for whose acts any of them may be liable, or (3) mechanics' or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the [Work] or any phase thereof. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising under this contract. This indemnification obligation shall not be limited in any way by: (x) any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with sub-contractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all sub-contractors. The indemnification obligations set forth in this Section shall survive the expiration or termination of the Construction Agreement";

4. (1) the right of Concessionaire to assign to the City the contract and Concessionaire's rights thereunder, at the City's request, without the consent of the Contractor, (2) that without the necessity of such assignment and without thereby assuming any of the obligations of Concessionaire under the contract occurring prior to such assignment and/or purchase order, except for Concessionaire's payment

obligations, the City shall have the right to enforce the full and prompt performance by the Contractor of such Contractor's obligations under the contract and (3) City is a third party beneficiary of the Construction Agreement;

5. "Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project, including, without limitation, the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31-27, as amended.";

6. "Upon an Event of Default by Concessionaire resulting in a termination of that certain Concession Agreement between Concessionaire and the City, dated as of _____, 20___, pursuant to which the City has granted Concessionaire the right to construct improvements within the Concession Area (as defined therein), Contractor shall, at the option of the City of Miami Beach, Florida, be terminated or Contractor will honor this agreement as if this agreement had been originally entered into with the City of Miami Beach, Florida.";

7. "Nothing contained in this contract is in any way intended to be a waiver of the prohibition on Contractor's ability to file liens against property of the City of Miami Beach, Florida, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.";

8. "Upon an Event of Default by Concessionaire resulting in a termination of that certain Concession Agreement between Concessionaire and the City, dated as of _____, 20___, pursuant to which the City has granted Concessionaire the right to construct improvements within the Concession Area (as defined therein), all covenants, representations, guarantees and warranties of Contractor hereunder shall be deemed to be made for the benefit of the City of Miami Beach, Florida, (and the City of Miami Beach, Florida, shall be deemed to be a third-party beneficiary hereof) and shall be enforceable by the City of Miami Beach, Florida.";

9. "Unless and until the City of Miami Beach, Florida, expressly assumes the obligations of Concessionaire under this contract (and then only to the extent the same arise from and after such assumption), the City of Miami Beach, Florida, shall not be a party to this contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract.";

10. "Contractor hereby agrees that notwithstanding that Contractor performed work at the Concession Area or any part thereof, the City of Miami Beach, Florida shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Concession Area, except to the extent the City of Miami Beach, Florida, expressly assumes the obligations of Concessionaire hereunder (and then only to the extent such obligations arise from and after such assumption)."; and

11. "Contractor warrants that all materials and equipment included in the Work will be new except where indicated otherwise in the Plans and Specifications or the Construction Agreement (collectively, the "Contract Documents"), and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents, and that such Work will provide proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same Work, Contractor further agrees to correct all Work found by Concessionaire or the City of Miami Beach, Florida to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Contract Documents, as well as any damage to the Work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the applicable warranty period. Contractor shall collect and deliver to Concessionaire and the City of Miami Beach, Florida any specific written warranties given by subcontractors or others as required by the Contract Documents (and such warranties shall be in addition to, and not substitutes for, those warranties mandated to be obtained pursuant to the Contract Documents). All such warranties shall commence upon Substantial Completion or such other dates as provided for in the Contract Documents,

or unless the warranted Work is not completed or has been rejected, in which case the warranty for the Work shall commence on the completion or acceptance of the Work."

Exhibit 10.9
Current City Rules and Regulations for Driving on Beach
(to be provided by City to Concessionaire by or before Occupancy Date)

Exhibit 13.1
Signage Criteria
(to be provided by City to Concessionaire by or before Occupancy Date)

Exhibit 14
Insurance Requirements

Commercial General Liability Insurance. From and after the Occupancy Date, Concessionaire, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance on a comprehensive basis, including contractual liability, to cover the Premises and the Concessionaire's operations and indemnity obligations to the extent the same is available related thereto, whether conducted on or off the Concession Area, in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence for bodily injury and property damage, subject to adjustment for inflation, such limits can be obtained through a combination of primary and umbrella/excess policies, and designating Concessionaire as a named insured and the City as an additional insured. Such insurance shall meet all of the standards, limits, minimums and requirements described in ***Exhibit 14.1***.

Property Insurance. From and after the Occupancy Date, Concessionaire, at its sole cost and expense, shall carry or cause to be carried **"All Risk"** (or its equivalent) property damage insurance protecting Concessionaire and the City as their interests may appear against loss to the Concession Area and Concession Area Structures and meeting all of the standards, limits, minimums and requirements described in ***Exhibit 14.2***.

Other Insurance. From and after the Occupancy Date, Concessionaire shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described in ***Exhibit 14.3***.

Construction Insurance. Prior to the commencement of any Work, and only if the Property and Liability coverage above does not otherwise apply, Concessionaire shall procure or cause to be procured, and after such dates shall carry or cause to be carried the insurance required by ***Exhibit 7.4***, until final completion of the Work, in addition to and not in lieu of the above-described coverages.

Additional Coverage. Concessionaire shall maintain such other insurance, in such amounts as from time to time reasonably may be required by the City, against such other insurable hazards as at the time are commonly insured against in the case of facilities in South Florida of a size, nature and character similar to the size, nature and character of the Concession Area and the Concession Operations.

City Cooperation. To the extent necessary, the City will cooperate with Concessionaire to provide any information or consents needed by insurance carriers to issue the policies required under the Concession Agreement and this Exhibit to cover the Concessionaire and the City, as applicable.

General Provisions Applicable to All Policies

Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of Florida that have a rating in the latest edition of **"Best's Key Rating Guide** of **"A:VII"** or better or another comparable rating reasonably acceptable to the City, considering market conditions.

Required Forms. All references to forms and coverages in this **Exhibit 14** shall be those used by the Insurance Services Organization (ISO) or equivalent forms reasonably satisfactory to The City in all material respects.

Required Certificates. Certificates of insurance evidencing the issuance of all insurance required by this **Exhibit 14** to the extent then required, describing the coverage and providing for thirty (30) days prior notice to the City by the insurance company of cancellation or non-renewal (except as otherwise set forth in the section titled "Required Insurance Policy Clauses," below), shall have been delivered to the City by the Occupancy Date, and a renewal policy replacing any

policies expiring during the Term, or a certificate thereof, together with evidence that the full premiums have been paid, shall be delivered to the City prior to the date of expiration of any insurance policy. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance, or its duly authorized agent, shall also deliver to the City proof reasonably satisfactory to the City that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. During the performance of any construction work, Concessionaire shall deliver to the City an entire duplicate original or a copy (certified by Concessionaire to be true, complete and correct) of each policy. At all other times, Concessionaire shall deliver to the City an entire duplicate original or a copy (certified by Concessionaire to be true, complete and correct) of each policy (which may be redacted with respect to premium amounts or, if the policy covers other properties owned by Concessionaire's Affiliates, redacted with respect to information relating to such other properties) within a reasonable period of time after the City's request therefor. Concessionaire shall notify the City of any material changes in the coverage provided under any policy promptly after requesting an insurance company to make such change or receiving any notice from an insurance company advising Concessionaire of any such change; provided, however, that no such change may reduce or otherwise modify the insurance coverage required under this Concession Agreement.

CERTIFICATE HOLDER MUST READ:

City of Miami Beach
c/o Exigis Insurance Compliance Services
P.O. Box 947 Murrieta, CA 92564

All certificates of insurance, endorsements, and exemption letters must be submitted to the City's servicing agent, currently, EXIGIS, at:

Certificates-miamibeach@riskworks.com

Compliance with Policy Requirements. Concessionaire shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Agreement, and Concessionaire shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article and each certificate issued by or on behalf of the insurer shall contain (i) a provision stating substantially that no act or omission of Concessionaire (or any other Person) or any use or occupation of the Concession Area for purposes more hazardous than are permitted by the policy shall invalidate the policy as to the City or affect or limit the obligation of the insurance company to pay to the City the amount of any loss sustained and that no act or omission of the City shall invalidate the policy as to Concessionaire or affect or limit the obligation of the insurance company to pay to Concessionaire the amount of any loss; (ii) a written waiver of the right of subrogation against all of the named insureds and additional insureds, including the City in its capacity as the owner of the Concession Area, with respect to losses payable under such policy; (iii) a clause designating the City, as its interests may appear, as loss payee or additional insured for losses in excess of Five Hundred Thousand Dollars ($500,000) per occurrence, adjusted for inflation; and (iv) an agreement by the insurer that such policy shall not be canceled, materially modified (except with respect to premium amounts), or denied renewal without at least thirty (30) days prior written notice to the City and the City's Risk Management

Division, specifically covering, without limitation, cancellation or non-renewal, except that ten (10) days' notice or statutory notice, whichever is greater, shall be given with respect to cancellation or non-renewal for any non-payment of premium.

Separate Insurance. Concessionaire shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Concession Agreement to be furnished by Concessionaire, unless the City is included therein as an additional insured with respect to liability or loss payee with respect to property, as their interests may appear, with loss payable as in this Concession Agreement provided. Concessionaire shall immediately notify The City of the carrying of any such separate insurance and shall cause the same to be delivered as in this Concession Agreement hereinbefore required.

Duration of Policies. Concessionaire shall procure policies for all insurance required by any provision of this Concession Agreement for periods of not less than one (1) year or the remainder of the policy term if insured under an existing blanket policy and shall procure renewals thereof from time to time to ensure continuous coverage, except that Builders' Risk Insurance shall only be renewed for the term of any construction period.

Blanket or Umbrella Policies. The insurance required to be carried by Concessionaire pursuant to the provisions of this Concession Agreement may, at Concessionaire's election, be effected by blanket, wrap-up and/or umbrella policies issued to Concessionaire covering the Concession Area, Concession Area Structures and other properties owned or leased by Concessionaire or its Affiliates, provided such policies otherwise comply with the provisions of this Concession Agreement and allocate to the Concession Area and Concession Area Structures the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Concession Agreement shall be effected by any such blanket or umbrella policies, Concessionaire shall furnish to the City, upon the City's request, certificates of insurance and copies (certified by Concessionaire to be true, complete and correct, which may also be redacted with respect to premium amounts or, if the policy covers other properties owned by Concessionaire's Affiliates, redacted with respect to information relating to such other properties) of such policies as provided in the paragraph titled "Separate Insurance," above, together with schedules annexed thereto setting forth the amount of insurance applicable to the Concession Area and Concession Area Structures.

Exhibit 14.1
Liability Insurance Requirements

The commercial general liability insurance required by **Exhibit 14** shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury. Such insurance shall (within the limits of the insurance required by **Exhibit 14**:

i. contain blanket contractual liability insurance covering written and oral contractual liability;

ii. contain contractual liability insurance specifically covering Concessionaire's indemnification obligations under **Section 17**, to the extent such indemnification obligation is for an insurable risk;

iii. contain independent contractors coverage;

iv. contain a notice of occurrence clause;

v. contain a knowledge of occurrence clause;

vi. contain an unintentional errors and omissions clause;

vii. contain coverage for suits arising from the use of reasonable force to protect persons and property;

viii. contain an endorsement providing that excavation and foundation work are covered and the "XCU" exclusions have been deleted;

ix. contain a waiver of completion and occupancy condition;

x. contain no exclusions unless specifically approved in each instance by the City, other than the industry standard exclusions for projects of similar size and location;

xi. contain Products Liability/Completed Operations coverage; and

xii. provide for a deductible determined by Concessionaire, but not more than One Hundred Thousand Dollars ($100,000) per loss, subject to adjustment for inflation.

Exhibit 14.2
Property Insurance Requirements

The property insurance required by **Exhibit 14** shall consist at least of property damage insurance under an "All Risk" policy or its equivalent covering the Concession Area and all Improvements (including without limitation the Concession Area Structures) with replacement cost valuation and an "agreed amount endorsement" to be effective not later than promptly following the date the Concessionaire receives a Certificate of Occupancy for any portion of the Concession Area (the "CO Date") in an amount not less than the full Replacement Value (as defined below),negating any coinsurance clauses and including the following coverages or clauses:

(a) coverage for physical loss or damage to the Improvements;
(b) a replacement cost valuation without depreciation or obsolescence clause;
(c) debris removal coverage;
(d) provision for a deductible determined by Tenant, but not more than Two Hundred Fifty Thousand Dollars ($250,000) per loss (for other than flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;
(e) contingent liability from operation of building laws;
(f) demolition cost for undamaged portion coverage;
(g) increased cost of construction coverage;
(h) flood coverage (to the extent available at commercially reasonable rates, limits and deductibles);
(i) windstorm coverage (to the extent available at commercially reasonable rates, limits and deductibles);
(j) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by the City);
(k) business interruption coverage in accordance with Exhibit 14.3;
(l) a clause designating the City as additional insureds, as its interests may appear; and
(m) contain no exclusions unless approved in writing by the City, other than the industry standard exclusions for facilities of similar size and location.

Concessionaire shall be named insured, and the City shall be additional insureds, as its interests may appear. The City shall be designated loss payee, as its interests may appear, on such "All Risk" policy for the benefit of the City and the Concessionaire. If not included within the "All Risk" coverage above, Concessionaire shall also carry or cause to be carried coverage against damage due to (i) water and sprinkler leakage and collapse, which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than Two Hundred Fifty Thousand Dollars ($250,000), subject to adjustment for inflation and (ii) flood, to the extent available at commercially reasonable rates, limits and deductibles.

If Concessionaire elects to insure its personal property used in connection with the Concession Operations, the replacement value of such personal property shall be added to the amount of insurance required by this Exhibit 14.2. For the purposes of this Exhibit 14.2, any rate, limit or deductible shall be "commercially reasonable" if such rate, limit or deductible is comparable to the rates, limits or deductibles in the insurance carried by similar facilities in South Florida of a size, nature and character similar to the size, nature and character of the Concession Area and the Concession Operations.

For purposes of this Exhibit 14.2, "Replacement Value" means the full cost of replacing the Improvements according to Requirements in effect at that time, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architects', engineers', surveyors', assessors' and other professional fees and development fees.

Exhibit 14.3
Other Insurance Requirements

The "Other Insurance" required by **Exhibit 14** shall consist at least of the following:

(a) Business Interruption Insurance effective no later than the Commencement Date to include so-called "Rent Insurance" on an "All Risk" basis in an amount determined by Concessionaire but not less than the Minimum Guaranteed Annual Concession Fee and Impositions. The insurance specified in this subsection shall:

(i) provide coverage against all reasonably insurable risks of physical loss or damage to the Improvements;
(ii) Extra Expense coverage, with a limit of at least One Million Dollars ($1,000,000), adjusted for inflation, to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Premises;
(iii) provide for coverage through the attainment of pre-existing business levels;
(iv) contain flood and windstorm coverage to the extent available at commercially reasonable rates, limits and deductibles;
(v) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by the City);
(vi) provide for a deductible determined by Concessionaire, but for not more than Two Hundred Fifty Thousand Dollars ($250,000), and thirty (30) days wait period for Builders risk policy per loss (other than for flood or windstorm, with regard to which the deductible shall be a commercially reasonable amount), subject to adjustment for inflation;
(vii) designate the City and Concessionaire as loss payee but shall be payable only to Concessionaire with respect to Business Interruption proceeds not exceeding One Hundred Thousand Dollars ($100,000), subject to adjustment for inflation, per occurrence; and
(viii) contain no exclusions, unless approved by the City, other than industry standard exclusions for facilities of similar size and location.

Notwithstanding the foregoing, Concessionaire may elect to exclude the Beachfront Area from its business interruption coverage, but the coverage shall in any case be in an amount not less than ninety-five percent (95%) of the Minimum Guaranteed Annual Concession Fee plus one hundred percent (100%) of the Impositions.

(b) Statutory Workers' Compensation with limits sufficient to respond to Chapter 440, Florida Statutes and any other insurance required by law covering all employees of Concessionaire or any entity performing work on or for the Concession Area and/or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than (i) One Million Dollars ($1,000,000) Bodily Injury by Accident, (ii) One Million Dollars ($1,000,000) Bodily Injury by Disease and (iii) One Million Dollars ($1,000,000) Bodily Injury by Disease, each employee, all subject to adjustment for inflation.

(c) After CO Date, Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion,

extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Concession Area and other machinery located on any portion of the Concession Area, which shall designate the Concessionaire as named insured and loss payee and designate the City as an additional insured.

(d) Automobile liability insurance covering any owned, non-owned and hired automobile or other motor vehicle used in connection with the Concession Operations in an amount not less than One Million Dollars ($1,000,000), subject to adjustment for inflation, per occurrence, with a deductible determined by Tenant of not more than Ten Thousand Dollars ($10,000) per loss, subject to adjustment for inflation.

(e) Concessionaire shall cause any architects or engineers to maintain architects and engineers errors and omissions liability insurance specific to the activities or scope of work such consultants will perform. If coverage is provided on a "claims made" basis, the policy shall provide for the reporting of claims for a period of five (5) years following the completion of all construction activities. The minimum limits acceptable shall be One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the annual aggregate.

Exhibit 17.5
Approved Beachfront Area and Pool Area Signage

BEACH SAFETY RULES
FOR YOUR OWN SAFETY IT IS REQUIRED
THAT YOU UNDERSTAND AND TAKE HEED OF THE FOLLOWING:

DUE TO THE INHERENT DANGER OF CONSTANTLY CHANGING OCEAN, SURF CONDITIONS AND WEATHER, PLEASE BE ADVISED THAT, WHEN ENTERING THE OCEAN, THERE ARE NATURALLY OCCURRING, UNCONTROLLABLE CONDITIONS AS WELL AS INHERENT RISKS WHICH COULD PHYSICALLY HARM YOU (AND POSSIBLY CAUSE DEATH), SUCH AS WIND, WEATHER, WAVE, SURF AND WATER CONDITIONS AS WELL AS, AMONG OTHER THINGS, SANDBARS, SEA LIFE, RED TIDE, GLASS AND SUBMERGED ARTICLES, NONE OF WHICH CAN BE CONTROLLED.

YOU ASSUME THE RISK OF ALL OF THESE CONDITIONS BY ENTERING THE OCEAN AND SWIMMING.

POOL SAFETY RULES
FOR YOUR OWN SAFETY IT IS REQUIRED
THAT YOU UNDERSTAND AND TAKE HEED OF THE FOLLOWING:

PLEASE BE ADVISED THAT THERE ARE NO LIFEGUARDS NOR WATER SAFETY INSTRUCTORS AND, ACCORDINGLY, [*INSERT NAME OF FACILITY*] SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH REGARD TO CONDITIONS OR EVENTS IN THE POOL AREA INCLUDING, WITHOUT LIMITATION, (A) WEATHER, WATER OR WIND CONDITIONS; (B) THE SAFETY OR HEALTH OF ANY PERSONS IN THE POOL AREA, OR (C) THE COMPETENCY, FITNESS, PHYSICAL LIMITATIONS, OR ABILITIES OF ANY PERSONS USING THE POOL AREA. MOREOVER, IT IS FURTHER ACKNOWLEDGED AND AGREED THAT [*INSERT NAME OF FACILITY*] AND ITS EMPLOYEES AND AGENTS SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR INCIDENTS OCCURRING IN THE POOL AREA OUTSIDE OF NORMAL BUSINESS HOURS.

YOU ASSUME THE RISK OF ALL OF THESE CONDITIONS BY ENTERING THE POOL AND SWIMMING.

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: September 27, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-479-KB FOR THE MANAGEMENT AND OPERATION OF A HIGH-END BEACH ESTABLISHMENT.

RECOMMENDATION

On May 17, 2023, the City Commission directed the Administration to prepare and issue a Request for Proposals (RFP) for the management or operation of a high-end beach establishment and ancillary uses at One Ocean Drive and adjacent concession area, with the new agreement(s) taking effect after the expiration of the existing lease and concession agreements on May 6, 2026. The RFP allowed bidders to submit proposals for up to two independent proposal alternates that are independent of each other - Option 1 for an agreement having a term of less than 10 years and Option 2 for an agreement having a term of up to 30 years.

After concluding a thorough review of the facts of this procurement, the results of the evaluation committee process, the financial analysis of the 10-year option versus the 30-year option, and the best interests of the City with regard to the property, it is recommended that the Mayor and City Commission select Option 1 and authorize the Administration to negotiate with Boucher Brothers, the unanimous top-ranked bidder for Option 1. The final agreement shall be subject to prior City Commission approval.

This solicitation remains under the cone of silence until the RFP is awarded by the City Commission.

BACKGROUND/HISTORY

On October 2, 1985, the Mayor and City Commission adopted Resolution No. 85-18223, approving a Lease between the City and Penrod Brothers, Inc. ("Penrod"), dated November 7, 1985 (the "Penrod Lease"), as amended by Amendments No. 1-3 thereof, for the development, construction, management and operation of a restaurant facility at One Ocean Drive (the "Beach Club"). The Penrod Lease had an initial term of 20 years, with two (2) 10-year renewal terms, and is currently set to expire on May 6, 2026.

On October 2, 1985, the Mayor and City Commission also adopted Resolution No. 85-18222, approving a Concession Agreement, dated November 7, 1985, between the City and Penrod for the rental of beach equipment, water recreation equipment, and food and beverage service at various locations in the vicinity of the leased property (the "Concession Area", and together with the Beach Club, the "Property"), which said Agreement was amended several times until its expiration in 2003. On February 25, 2004, the Mayor and City Commission executed a new Concession Agreement by and between the City and Penrod Brothers, Inc., for the management and operation of a concession in the portion of Pier Park seaward of the footprint of the Penrod's Restaurant, located at One Ocean Drive, Miami Beach, Florida (the "Penrod Concession Agreement"). The Penrod Concession Agreement is similarly set to expire on May 6, 2026.

On May 17, 2023, pursuant to Resolution 2023-32612, the City Commission directed the Administration to prepare and issue a Request for Proposals (RFP) for the management and operation of a high-end beach establishment and ancillary uses on the Property and adjacent concession area, with the new agreements taking effect after the expiration of the existing Penrod Lease and Penrod Concession Agreements on May 6, 2026. Accordingly, a Request for Proposals (RFP) was developed to seek proposals from firms interested in being considered to negotiate an agreement with the City for the management and operation of a high-end beach establishment and ancillary uses on the Property and adjacent concession area, the details and requirements of which were delineated in the RFP.

Resolution No. 2023-32612 specifically directed the Administration to allow proposers to submit up to two (2) independent proposal alternates. In order to provide guidance to proposers, and to allow for the evaluation and review of comparable proposals, the RFP specified that each Bidder had the option to submit one (1) proposal for Option 1 (Agreement having a term of less than 10 years) and one (1) proposal in for Option 2 (Agreement having a term equal to or greater than 10 years but not more than 30 years, including options, in accordance with Resolution No. 2023-32612). To encourage creativity, the RFP contemplated that Bidders could offer alternative concepts or approaches for the use of the Property in respect of Option 1 and Option 2, as well as alternative financial and other terms for a lease, concession agreement, or management agreement in respect of the Property and the Concession Area. In all cases, any proposed agreement between the City and a Bidder that includes the beachfront to the rear of the existing Beach Club must be in the form of a concession agreement.

ANALYSIS

On June 13, 2023, RFP 2023-479-KB for the management and operation of a high-end beach establishment was issued. A mandatory pre-proposal conference to provide information to proposers submitting a response was held on June 28, 2023, and July 12, 2023. A site visit was held on July 12, 2023. Eight (8) addenda were issued, and 83 prospective bidders accessed the advertised solicitation. On July 31, 2023, and August 15, 2023, the City received two (2) protests challenging the specifications included in the RFP. Both protests were responded to on August 4, 2023, and August 18, 2023, respectively, and as a result, the RFP due date was extended by 16 days. RFP responses were due and received on August 31, 2023. The City received proposals from the following firms for Options 1 and 2[1]:

Option 1:

- Boucher Brothers Management, Inc.
- Tao Group Hospitality/One Ocean Hospitality LLC
- The Group US Management LLC

Option 2:

- Boucher Brothers Management, Inc.
- RH
- Tao Group Hospitality/One Ocean Hospitality LLC
- The Group US Management LLC

All the proposals received satisfied the qualifications requirements established in the RFP, with each Bidder team demonstrating at least five (5) years of experience (within the last 10 years) in managing or operating a beach establishment, beach concession, or a similar operation.

On July 13, 2023, the Evaluation Committee was appointed via LTC # 316-2023. The Evaluation Committee convened on September 11, 2023, to consider the proposal received. The Committee was comprised of Heman Cardeno, Director, Code Compliance Department; Jose Del Risco, Assistant Director, Parks and Recreation Department; Jason Greene, Chief Financial Officer, Finance Department; Keith Marks, President, South of Fifth Neighborhood Association (SOFNA); Elizabeth Miro, Interim Director, Facilities and Fleet Management Department.

The Committee was provided an overview of the project, information relative to the City's Cone of Silence Ordinance, and the Florida Sunshine Law. The Committee was also provided with general information on the scope of services and a copy of each proposal. The Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFP. The results of the evaluation process are included in Attachment A and summarized below.

OPTION 1

The proposal submitted by Boucher Brothers for Option 1 was the unanimously top-ranked proposal by the Evaluation Committee. In fact, the Evaluation Committee unanimously ranked all proposals for Option 1, with The Group US Management LLC and Tao Group Hospitality unanimously ranked as the second and third-ranked proposals, respectively. Attachment B provides a high-level comparison of the three (3) proposals.

In scoring proposals, the Evaluation Committee emphasized Boucher Brothers' qualifications, public benefits, and financial proposal. Boucher Brothers has over 20 years of experience in Miami Beach and Ft. Lauderdale managing and operating beach establishments or concessions. For food and beverage operations, Boucher Brothers has teamed with Major Food Group LLC, which has experience with high-end food establishments. The Boucher Brothers' proposal also includes a childcare center operated by Itavi, where parents can drop off their children for supervised activities. Itavi provides childcare services to various hotels and properties, including Fontainebleau Miami Beach, Eden Roc, W South Beach, One Hotel, Acqualina Resorts, Saint Regis Bal Harbour, and the Biltmore Hotel. The team also includes architecture and landscape designs by Kobi Karp and Raymond Jungles. The proposed public benefits include a police sub-station, resident discounts, and other benefits highlighted in Attachment B. Boucher Brothers has proposed a rent of 10% of gross operating revenue with a minimum annual guarantee of $4 million that escalates annually at 3% beginning in year 2. It is estimated that the minimum rent yield to the City would be approximately $41 million over the 10-year term for Option 1.[2] Additionally, Boucher Brother proposes an estimated cost of improvements to the Property, which includes major renovations, in the amount of $26,226,920. The proposal submitted by Boucher Brothers for Option 1 is included as Attachment C.

OPTION 2

The Evaluation Committee process resulted in a tie between the proposals submitted by Boucher Brothers and The Group US Management, with Tao Hospitality and RH, being unanimously ranked as third and fourth, respectively. A high-level comparison of certain aspects of the proposals submitted by Boucher and The Group US Management for Option 2 is attached as Attachment D.

As was the case in Option 1, the Evaluation Committee emphasized Boucher Brothers' qualifications, public benefits, and financial proposal for Option 2, including the experience of the team, the public benefits of enhanced security and resident discounts, as well as the proposed revenue to the City. The programming and design portions of the proposal submitted by Boucher Brothers for Option 2 is the same as its Option 1 proposal with the difference being in the financial proposal. See Attachments D and E. As revenue to the City, Boucher Brothers is again proposing 10% of gross operating revenue with a minimum annual guarantee of $4 million that escalates annually at 3% beginning in year 2. It is estimated that the minimum rent yield would be approximately $190 million over the 30-year term for Option 2.[3] Additionally, Boucher Brother proposes improvements to the Property that are estimated to cost $26,226,920.

For the proposal submitted by The Group US Management, the Evaluation Committee emphasized the programming options and design proposed, which includes a new building that incorporates a 120-seat performance venue for live performances and community events, a lagoon area, and arts and exhibitions spaces. The Group US Management's major food and beverage partner is Casa Reîa.

The Group has proposed a rent of $3 million annually (after an initial period of rent abatement) with a 10% escalation every five (5) years with no percentage of rent as revenue to the City. It is estimated that the minimum rent yield to the City would be $115 million over the 30-year term for Option 2.[4] Additionally, The Group US Management proposes an estimated cost of improvements to the Property, which includes a new building, in the amount of $36,000,000. The proposal submitted by The Group US Management for Option 2 is attached hereto as Attachment F.

ANALYSIS OF OPTION 1 VERSUS OPTION 2

The top-ranked proposal for Option 1, proposed by Boucher Brothers, Inc., and the tied top-ranked proposals for Option 2, proposed by Boucher Brothers, Inc. and The Group US Management would all replace the current facility with multi-amenity beach clubs that offer various restaurant choices, retail, lounge areas and beach concession amenities. While there are some differences in the programming proposed by Boucher Brothers, Inc. and The Group US Management, the main differences between the proposal for Option 1 and the proposals for Option 2 are the length of time of the agreement and the financial consideration of the proposals. In addition to the qualifications, proposed programs, and public benefits, the following factors have contributed to the recommendation for the award recommendation included herein.

- Boucher Brothers has committed to making an investment of approximately $26 million to transform the current facility for both options. For Option 2, The Group US Management has committed $36 million to demolish the current facility and construct a new facility. While Boucher Brothers is proposing an initial lower investment, a $26 million investment of the current facility should yield a *like-new* facility for the near 10-year term of Option 1.
- Boucher Brothers is proposing 10 percent (%) of gross revenue to the City as rent with a $41 million minimum annual guarantee for Option 1 and $190 million minimum guarantee for Option 2. For Option 2, The Group US Management is proposing $115 million for Option 2. When the net present value (applying a 5% discount rate) is considered, the net present value of Boucher Brother's Option 1 is $30 million, whereas the net present value of The Group US Management proposal for Option 2 is only $45 million. The additional value proposed by The Group US Management for Option 2 does not warrant tying up the property for 30 years as one would expect a more significant difference between the net present value of Option 1 and Option 2.
- A significant portion of both proposals include specific brands for proposed food and beverage outlets. Considering that most restaurants have relatively short life spans as trends change, it may not be prudent to tie up the facility with a 30-year agreement for a specific brand. Further, should the public's taste change or a future city commission determine a better use for the Property, a 10-year option would provide flexibility for other uses of the Property.

FORM OF AGREEMENT

The Property is currently operated pursuant to a lease agreement governing a portion of the Property and a concession agreement governing the remainder of the Property. Ultimately, whether to pursue a lease or a concession agreement (or both) is for each Proposer to negotiate with the City. It is important to note that the purpose of this item is to seek authorization to negotiate with the selected proposer, either for Option 1 or Option 2. Final agreement details, such as the form of agreement (i.e., lease versus concession agreement), final programming, investments, etc., will be finalized through negotiations. After negotiations have concluded and further due diligence has been conducted, the final agreement will require approval by the City Commission.

As previously noted, the form of agreement to be entered into with the successful proposer will be determined during the negotiations authorized by the City Commission. In determining the form of agreement and length of the term, the following considerations are important:

- A management or concession agreement having a term of less than ten (10) years will require approval of a 4/7th vote of the City Commission.
- A management or concession agreement having a term of ten (10) years or longer (including option periods) will require approval by a 4/7th vote of the Planning Board and a 6/7th vote of the City Commission (Section 1.03(f) of the City Charter).
- A lease of the Property for a term of less than ten (10) years will require (a) transmission by the City Manager to the Finance and Economic Resiliency Committee for its review (Section 82-37(b)(1) of the City Code); (b) one reading of the title by the City Commission accompanied by a public hearing (Section 82-37(b)(2) of the City Code); and (c) approval by a majority of the residents residing in voting precincts any part of which is within 1 mile of the boundaries of the Property (Section 7-02 of the Miami-Dade County Charter).
- A lease of the Property for a term of ten (10) years or longer will require (a) transmission by the City Manager to the Finance and Economic Resiliency Committee for its review (Section 82-37(a)(1) of the City Code); (b) two readings of the title by the City Commission, with the second reading to be accompanied by a public hearing (Section 82-37(a)(2) of the City Code); (c) approval by a majority vote of the voters in a city-wide referendum (Section 1.03(b)(1) of the City Charter); and (d) approval by a majority of the residents residing in voting precincts any part of which is within 1 mile of the boundaries of the Property (Section 7-02 of the Miami-Dade County Charter).

SUPPORTING SURVEY DATA

Not applicable.

FINANCIAL INFORMATION

Financial information for each of the recommended proposals for Option 1 and Option 2 is included in the Analysis section above.

CONCLUSION

Based on the foregoing, it is recommended that the Mayor and City Commission of the City of Miami Beach, Florida, approve the Resolution accepting the recommendation of the City Manager, pursuant to RFP No. 2023-479-KB, for the management and operation of a high-end beach establishment at the Property, to award Option 1 to Boucher Brothers, the unanimous top-ranked proposer for this option, and authorizing the Administration to negotiate an agreement with Boucher Brothers, Inc. The final agreement shall be subject to prior City Commission approval.

Endnotes:

[1]Penrod Brothers, Inc. ("Penrod") submitted a proposal that failed to comply with the RFP's express requirements for submission. This submission was made after the 3:00:00 p.m. deadline on August 31, 2023 and was received in hard copy and via email file-share – not through Periscope, as required by the RFP. Penrod subsequently submitted a bid protest contending that it did timely submit its proposal or, alternatively, that it should have been granted an extension because one of its lawyers was based in Tallahassee and was affected by Hurricane Idalia. Notably, however, Persicope reflects Penrod's representative's activities uploading documents as early as 7:59 a.m. on August 31st, as well as activity continuing up to and including 2:59:44 p.m. The bid protest alternatively requested that the City waive the RFP's fixed 3:00:00 p.m. submittal deadline as a "minor and non-material timing issue." The City denied this bid protest based, among other things, on the plain and unambiguous terms of RFP Section 0100, Paragraph 6 ("Deadline for Proposal Submittal"). Penrod has challenged the City's denial of the protest in the action styled Penrod Brothers, Inc. v. The City of Miami Beach, Florida, Case No. 1:23-CV-23362-JEM (S.D. Fla).

[2]For Option 1, applying a 5% discount rate, the net present value of this income stream from Boucher Brothers is approximately $30 million.

[3]Applying a 5% discount rate, the net present value of this income stream from Boucher Brothers (Option 2) is approximately $72.5 million.

[4]Applying a 5% discount rate, the net present value of this income stream from The Group (Option 2) is approximately $45 million.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	**Does this item utilize G.O. Bond Funds?**
Yes	No

Legislative Tracking

Facilities and Fleet Management/Procurement

ATTACHMENTS:

	Description
▫	Attachment A
▫	Attachment B
▫	Attachment D
▫	Link to Attachments C, E, and F

Value-Added Enhancements/Public Benefit Requirements

The following public benefits are to be provided by Concessionaire:

1. From the date the Beachfront Operations commence and throughout the Term, the Concessionaire shall have three (3) manual and one (1) motorized beach accessible wheelchairs, in good condition, available for use by patrons at the Beachfront Area.

2. From and after the Commencement Date, the Concessionaire shall:
    a. Make a payment on or before the Commencement Date and on or before each anniversary thereof in the amount of $250,000 in the first Agreement Year, increased by 5% each subsequent Agreement Year throughout the Term to provide funding for the salary and supplies for two (2) Police Officers and one (1) Park Ranger.
    b. Provide the City with an indoor air-conditioned space of not less than 250 square feet to be located in the Restaurant Building or the Pavilion Building for City use including but not limited to a police sub-station throughout the Term. If the City elects to not utilize the space as a police substation but for another City use, the Concessionaire will also make a one-time payment of $20,000 to the City to be used to defray costs of City-funded police supplies and equipment. Payment will be due no later than 60 days from the City's written notice or the Commencement Date, whichever is later.
    c. Develop an All-Access App (the "App") for City of Miami Beach residents that will be launched by or before the Commencement Date. Adult City of Miami Beach residents will have the opportunity to register to verify residency on the App (and shall be required to re-verify residency annually)(City of Miami Beach residents who are registered and verified are referred to as "Registered CMB Residents").
    d. During the Term, Registered CMB Residents will be entitled to "priority access" and certain discounts at the Concession Area and other beach concessions operated within the City of Miami Beach by Affiliates of Concessionaire pursuant to agreements with the City (as opposed to concessions operated pursuant to agreements with private parties) ("Affiliated Public Concession Areas") as follows:
        i. Registered CMB Residents will get priority access to reserve tables, lounge chairs, and/or other Beach and Pool Equipment at the Restaurants, the Pool Area, and the Beachfront Area. Priority access means that Concessionaire shall hold not less than thirty percent (30%) of its available seating at restaurants and/or Beach and Pool Equipment inventory at the Pool Area and Beachfront Area for Registered CMB Residents. The Restaurant seating and Beach and Pool Equipment set-asides that have not been reserved by Registered CMB Residents may be released for use by the general public five (5) days before the date in question. Priority access does not guarantee a reservation. Subject to the thirty percent (30%) hold, reservations will be based on availability.
        ii. Each Registered CMB Resident plus one guest will receive a 15% discount on the use of Pool and Beach Equipment (including but not limited to beach chairs, lounge chairs, day beds, cabanas, and umbrella rentals) at the Pool Area, the Beachfront Area and at Affiliated Public Concession Areas

iii. Each Registered CMB Resident plus one guest will receive a 15% discount to managed water activities at Affiliated Public Concession Areas and, if offered in the future with the City's prior approval, at the Beachfront Area.
iv. Each Registered CMB Resident plus one guest will receive a 10% discount for food and beverage charges for all dining outlets at the Concession Area as well as any food and beverage offerings at any Affiliated Public Concession Areas.

e. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $36,000 annually to defray costs of City-funded food services including but not limited to the Mobile Food Pantry Program.
f. Develop a partnership with Miami Beach Senior High School Culinary Arts Program (which may include interactive Zoom/Teams meetings with students, student site visits to the Restaurants and such other activities as the Concessionaire and the Miami Beach Senior High School administration shall agree upon).
g. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $30,000 annually to enable the City to make donations in equal amounts annually to all public schools located within the City of Miami Beach for the purchase of supplemental supplies, equipment, etc. in coordination with each school's principal.
h. Develop a calendar for twelve (12) special events per contract year for residents at the Concession Area. Events to be provided to City for review and approval.
i. Mechanically sift sand fifty-two (52) times per Agreement Year from Government Cut to 5th street.
j. Implement a daily (i.e., once per day) litter cleanup program along the beach from Government Cut to the north side of Douglas Park from the eastside of the dunes to the highwater mark and the beachwalk area directly behind Pier Park. Program to be provided to and approved by the City.
k. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $30,000 annually to defray costs of City-funded dune maintenance and/or restoration.
l. Organize twelve (12) litter cleanup events per year targeting areas such as waterways, islands, causeways, and streets. Events to be coordinated with and approved by the City.
m. Provide the City with a payment of $25,000 to provide funding towards improvements at the Washington Avenue Bark Park including drinking stations and additional trees.
n. Pay directly for the design, permitting, equipment purchase, and installation of sail shades to cover the Public Children's Playground on 13th and Ocean Drive in Lummus Park. City to approve the contractor.
o. Make a payment on or before the Commencement Date and on or before each anniversary thereof with a payment of $2,000 annually to provide funding towards the Victory Garden located at 226 Collins Avenue.
p. Make a payment on or before the Commencement Date and on or before each anniversary thereof of $20,000 annually to defray costs of City-funded senior programs.

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