

ITEM 1

DATE: June 26, 2014
TO: Aviation Advisory Board
BY: Mark J. Cervasio, Acting Airport Manager 
SUBJECT: Schlitterbahn Waterpark Lease Agreement - Parcels 25, 26, 27 and 19B

The City has been working with Schlitterbahn Waterparks and Resorts of Texas on a lease of parcels 25, 26, 27 and 19B (The Stadium property) at Executive Airport, for the development of a waterpark. The property consists 64.32 acres and is situated on the east side of the airport. Currently these parcels include Fort Lauderdale Stadium with associated parking facilities and ball fields on parcel 27, and Lockhart Stadium with associated parking facilities on parcel 26. Parcels 25 and 19B have no improvements placed on them.

The proposed Schlitterbahn Waterpark is a one-of-a-kind economic development project that will transform the existing Fort Lauderdale Stadium property and adjacent parcels into a world class resort featuring a five star waterpark along with amusement rides, swimming pools, sports and recreational activities, summer camps, resort lodging, destination retail, and live entertainment.

Renovations will be made to Lockhart Stadium and the surrounding properties. This will provide the City with a permanent home for the Fort Lauderdale Strikers, and a state-of-the art complex to host local, state and national athletic events, as well as major outdoor concerts, events and festivals. Four new soccer fields will be constructed and available for public use. The project is expected to create 100 new permanent jobs, including executive, management, and administrative positions, and 2,000 new seasonal jobs, while generating an economic impact of \$267 million per year.

Annual rent for the property will start at \$810,000.00 or \$.28 per square foot and will be due in monthly installments. Monthly rent shall begin accruing on the commencement date of the lease; however, payments will be deferred for an 18 month period beginning on the commencement date of the lease. The deferred rent will bear simple interest. The interest rate will be set once per year on the anniversary date of the lease. The deferred rent and accrued interest will be paid in 60 monthly payments, beginning the 60th month after the commencement date of the lease.

Rent will be subject to an annual increase beginning one year after the commencement date. The rent adjustments will be the greater of a 1% increase or an increase based on the Consumer Price Index (CPI), but will not be greater than 5% in any given year. The term of the lease will be for 30 years with two five year options.

Execution of this lease is an opportunity to realize revenue from property that has long been undervalued and is now vacant.

Staff Recommendation

The staff recommends that the City Commission authorize the proper city officials to execute a lease agreement with Schlitterbahn Waterparks and Resorts for parcels 25, 26, 27 and 19B at Executive Airport for an annual rental rate starting at \$810,000 for the first year and adjusted annually thereafter, as per the lease, for a term of 30 years with two (2) five (5) year options.

LEASE AGREEMENT
PARCELS 19B, 25, 26 and 27

for

SCHLITTERBAHN WATERPARK FORT LAUDERDALE

THIS IS A LEASE AGREEMENT, entered into on _____,
2014, between:

THE CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, referred to as "**Lessor**" or "City"

and

FTL WATERRESORT, LLC, a Florida limited liability company, referred to as the "**Lessee**."

WHEREAS, Lessee is desirous of developing a destination water park resort facility on certain premises owned by the Lessor, and the Lessor is desirous of enhancing the Fort Lauderdale Industrial Airpark through the development of such facilities; and

WHEREAS, by virtue of the representations made in this Lease, the Lessor leases to the Lessee the property consisting of approximately 64.32 acres (referred to in this Lease as the "**Premises**") situated in Fort Lauderdale, Broward County, Florida, located at 5301 NW 12th Avenue, Fort Lauderdale and more particularly described in **Exhibit A** to this Agreement for the purpose of constructing and operating the Project and operating the Public Assets, each as is more particularly described herein and in the Conceptual Site Plan attached as **Exhibit B** to this Agreement; and

WHEREAS, Lessor has determined that the Project shall serve a public purpose, insofar as the benefits to the local community of having a one-of-a-kind waterpark in Fort Lauderdale are unique, diverse, and in the public's interest and include, but are not limited to, the creation of new jobs and increased employment opportunities, direct and indirect revenues and the enhancement of the community's image; and

WHEREAS, the City Commission of the City of Fort Lauderdale, by Resolution No. _____, adopted at its meeting of _____, 20____, authorized the proper City officials to execute this Lease.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

ARTICLE 1. PURPOSE/DEFINITIONS

1.01 **PURPOSE**. The Premises shall be developed and used, subject to applicable zoning regulations (as same may be amended as part of the Rezoning), for family recreation and entertainment and other retail operations ancillary thereto, including, but not limited to, a waterpark and resort facility, including, but not

limited to, hotel, motel and other lodging facilities for guests, amusement rides, swimming pools/facilities, food and beverage sales and concessions (including, but not limited to, the sale of alcoholic and non-alcoholic beverages), a video arcade, restaurants, retail or novelty stores (including the sale of clothing), live entertainment and related facilities, sports venues, roadways, parking areas, and signage, and for similar forms of recreation, resort lodging, destination retail, sporting venues and/or entertainment.

1.02 DEFINITIONS.

- a. **Airport** means Fort Lauderdale Executive Airport, located in Fort Lauderdale, Broward County, Florida, also known as FXE.
- b. **Airport Manager** means the individual serving as manager of the Fort Lauderdale Executive Airport, located in Fort Lauderdale, Florida.
- c. **Airport Master Plan** means the Fort Lauderdale Executive Airport Master Plan and any update to the Airport Master Plan that is in effect and all amendments or replacements to said Airport Master Plan or Update.
- d. **Affiliate** means a person who (i) is directly or indirectly controlled by, or under common control with, the specified person ; or (ii) owns directly or indirectly thirty-five (35%) or more of equity of the specified person; or (iii) is a general partner, officer, director, member, trustee or fiduciary of the specified person or of any person described in (i) or (ii), preceding; or (iv) is a son, daughter, spouse, parent, sibling or in-law of the specified person.
- e. **Agreement, Lease Agreement, or Lease** means this Lease Agreement, including any supplements, modifications, amendments or exhibits thereto.
- f. **Applicable Approvals** means all Governmental Approvals (with all appeal periods having expired) required by Lessee for the Project.
- g. **Approved Plans** means the plans and specifications for the Project (as amended from time to time) that have received the prior approval of the Lessor to the extent required under Article 12 of this Lease.
- h. **Aviation Advisory Board** means the advisory board of the City created pursuant to Sections 7-31 et seq., of the Fort Lauderdale Code of Ordinances.
- i. **City or Lessor** means the City of Fort Lauderdale, Florida, a municipal corporation organized and existing in the State of Florida.
- j. **City Commission** means the governing body of City.
- k. **City Manager** means the City Manager of the City of Fort Lauderdale, FL
- l. **CO Date** and the date(s) that any Improvements are completely constructed, means the date(s) upon which a final certificate of occupancy shall be issued by the appropriate City agency or department with respect to the Improvements to be constructed on the Premises, the date upon

which the Improvements may first be put into service for the intended use, regardless of whether such is the actual first date of usage.

- m. **Contractor** means any Person contracted by the Lessee to construct the Project.
- n. **Commencement Date** means the later of (i) the date 270 days after the Effective Date, or (ii) thirty (30) days after the Rezoning (as hereinafter defined) has occurred.
- o. **Commencement of Construction** means the earlier of the date upon which Lessee begins demolition of any Improvements on the Premises that exist as of the Effective date of this Agreement pursuant to a demolition permit or the date on which the Lessee begins construction of any Improvements for the Project pursuant to a building permit.
- p. **Day** means in computing any period of time expressed in day(s) in this Lease Agreement, a calendar day, however, the day of the act, event, or default from which the designated period of time begins to run shall not be included in such computation. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Holiday, in which event, the period shall run until the end of the next day which is neither a Saturday, Sunday or Holiday.
- q. **Demolition Bond** means the bond required to be provided by Lessee upon commencement of construction to cover demolition and removal of all Lessee-installed Improvements, personal property, furniture, fixtures and equipment on the Premises not including any Lessee-installed improvements on the Public Assets.
- r. **Effective Date** means the date upon which this Agreement is executed by both parties and approved in writing by the FAA.
- s. **FAA** means the Federal Aviation Administration, or any successor agency.
- t. **Force Majeure** means any event which results in the prevention or delay of performance by a party of its obligations under this Lease and which is beyond the reasonable control of such party, including, without limitation, fire or any other casualty, an act of God, natural disasters, hurricanes, tornadoes, storms, lightening, epidemic, war, act(s) of terrorism, riots, strikes, intervention by civil or military government authorities and governmental actions or inactions. Notwithstanding the foregoing, the legislative acts of the City of Fort Lauderdale shall not constitute a Force Majeure (so long as such legislative acts do not delay Lessor's compliance with its obligations under this Lease), but unusual delays in permit review/processing, inspections and other governmental action required to commence or continue approval and/or construction of the Project shall be considered Force Majeure.
- u. **Governmental Approvals** means all governmental and quasi-governmental approvals from applicable city, county and other agencies and authorities required to develop the Project pursuant to the Conceptual Site Plan and Master Plan, including, but not limited to, site plan

approvals, comprehensive land use plan approval, plat approvals and recordation, public dedications, environmental approvals, zoning approvals, building permits and all other governmental approvals required in connection with the development of the Project and Lessee's obligations with respect to the all Public Assets (and the expiration of all appeal periods with the respect thereto), modification and/or vacation of easements and other matters pertaining to the Project.

- v. **Holidays** means those designated non-work days as established by the City Commission of the City of Fort Lauderdale.
- w. **Improvements and Leasehold Improvements** mean any buildings, pavements, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and all other structures now or hereafter constructed on the Premises, and all additions, alterations, modifications, renovations and replacements thereto.
- x. **Inspection Period** means the later of (i) the date 270 days after the Effective Date, or (ii) thirty (30) days after the Rezoning (as hereinafter defined) has occurred, during which period the Lessee has the right to conduct, at Lessee's sole expense, inspections, analyses, studies, surveys, title reviews, environmental studies (to include Phase I and Phase II environmental studies) and other tests of the Premises to make application for licenses and permits, and to seek such Applicable Approvals necessary in connection with the development and financing of the Project contemplated on the Premises.
- y. **Lessee** means FTL WaterResort, LLC, a Florida limited liability company, its successors or assigns as permitted by this Lease.
- z. **Master Plan** means the approved master plan for construction of the Project on the Premises prepared by Lessee which may provide for phasing of construction and which shall be valid for 7 years after approval by Lessor.
- aa. **Materials** means any contaminant or materials regulated by federal, state or local law, including hazardous materials, hazardous substances, hazardous waste and pollutants.
- bb. **Nondisturbance Agreement** means an agreement in the form of **Exhibit D**.
- cc. **Person** means any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise.
- dd. **Premises** means the property more particularly described in **Exhibit A**, subject to all easements, rights-of-way of record, restrictions and declarations, together with all buildings, structures, pavements, facilities and other Improvements now or hereafter constructed thereon, the equipment permanently affixed therein, such as electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems and their pipes,

wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch basins.

- ee. **Project** means the redevelopment of the Premises into Schlitterbahn Waterpark Fort Lauderdale substantially in accordance with the Conceptual Site Plan attached as Exhibit B to this agreement and the Master Plan to be prepared by Lessee and submitted to Lessor for approval and for the uses described in Section 1.01.
- ff. **Project Schedule** means the schedule attached as **Exhibit C** to this Agreement setting forth the time frame in which to complete the Project
- gg. **Public Assets** means the portion of the Premises designated for public use and enjoyment consisting of the portion of the Premises known as Lockhart Stadium (Parcel 26) and the 4 soccer fields to be constructed as part of the Project.
- hh. **Rent** means the amount paid by Lessee to Lessor for use of the Premises in accordance with Article 4 of this Agreement.
- ii. **Rezoning** means the application for rezoning of the Premises to the zoning designation necessary to allow the development of the Project in accordance with established requirements and all applicable law and as set forth in Article 10.
- jj. **Subleased Premises** means the Premises demised under a Sublease.
- kk. **Sublessee** shall have the meaning set forth in Articles 18 and 23.
- ll. **Term of this Lease, Term**, or words of similar import means the term set forth in Article 3 of this Agreement as may be extended.
- mm. **Title Company** means the title company selected by Lessee to issue any leasehold title insurance policy, which Lessee may elect to obtain insuring its right under this Lease.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Recitals. The foregoing recitals are true, correct and incorporated into this Lease.

2.02 Municipality. The Lessor is a municipal corporation organized and existing pursuant to the laws of the State of Florida.

2.03 Deed. On March 11, 1947, there was executed and delivered to the Lessor by the United States of America a deed conveying to the Lessor certain land situated near the territorial limits of the City of Fort Lauderdale, Florida, known as Prospect Field, which deed of conveyance is recorded in Deed Book 579, Page 130, of the Public Records of Broward County, Florida. This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Lessor acquired the subject property from the United States of America, except as to such terms and conditions as may have been specifically released or waived by the Federal Aviation Administration or its predecessor, and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions

contained in the lease of said lands from the Lessor, and any existing or subsequent amendments thereto.

2.04 Disclosure. The Lessee acknowledges that the Lessor has made full disclosure of all facts reflected by the aforesaid Deed. Other than as set forth in this Lease, Lessor makes no representations or warranties whatsoever as to: (i) the condition of the Premises; or (ii) whether the Premises, or any part thereof, is in compliance with applicable federal, state, and local laws, ordinances, rules and regulations, including without limitation, (provided, however, Lessor represents and warrants that it has not received written notice of violation of any such federal, state or local law, ordinances, rules and regulations); or (iii) the permitted or available uses of the Premises under applicable federal, state, or local laws, ordinances, rules and regulations, including without limitation, those of City. Lessor makes no representations or warranties concerning habitability or fitness of the Premises for a particular purpose. The Lessee specifically acknowledges that it has made, or has had an opportunity to conduct a thorough and complete inspection and due diligence investigation of the Premises and the suitability thereof for Lessee's purposes during the Inspection Period, and is fully advised of its extent and condition. The Premises and all components thereof are hereby demised in "AS IS CONDITION" and "WITH ALL FAULTS" in the present state and condition. Lessee represents, acknowledges, and agrees that it has had sufficient opportunity to inspect the Premises and all components thereof, and hereby accepts the Premises, and all components thereof, in "AS IS CONDITION" and "WITH ALL FAULTS." Lessee ASSUMES ALL RISK of noncompliance of that portion of the Premises not constituting Public Assets and assumes all risk with regard to the Public Assets for noncompliance with Lessee's obligations under this Lease and those of their subleases or management company, or any part thereof, with any federal, state, or local laws, ordinances, rules and regulations. Upon receipt of any notice of non-compliance with any such laws, ordinances, rules or regulations, Lessee agrees to make any and all repairs, alterations, and additions and to take all corrective measures as may be necessary to bring the Premises, including the Public Assets in so far as non-compliance results from Lessee's failure to comply with the requirements under this Lease or the same such failure by Lessee's sublessee's or management company, into compliance with all laws, ordinances, rules and regulations; provided, however, Lessee shall have the right to challenge any such laws, ordinances, rules and regulations and may defer compliance therewith provided that in doing so the Lessee shall not subject the Lessor to any liability in connection therewith. Lessee shall not be entitled to any adjustment of any rentals hereunder on account of the condition of the Premises, or any failure of any of the component parts to be in working order; or because of the necessity of Lessee to repair or take corrective actions with respect to any part thereof or because of the inability of obtaining or any delay in obtaining any required Applicable Approvals from any governmental agency having jurisdiction, including but not limited to City and its departments. Furthermore, Lessee hereby releases Lessor of any and all claims and liabilities whatsoever on account of the condition of the Premises or any failure of any of the component parts to be in working order or because of the necessity of Lessee to repair or take corrective actions with respect to any part of the Premises, or the necessity for obtaining any Applicable Approvals from any governmental agency, including the City and its departments. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that: (1) this section is not intended to address or

apply to the discharge of any Material and (2) with respect to any such Material, the provisions of Article 34 shall apply. This section specifically excludes environmental concerns, which are governed by the provisions of Article 34 of this Lease Agreement.

2.05 Authority. All steps, acts and conditions required by the Charter of the Lessor to be done as a condition precedent to the execution of the Lease have been done, and the Lessor has full authority to enter into this Lease.

2.06 Lessee's Ability. The Lessee represents and warrants to the Lessor that it is authorized to transact business within the State of Florida. The Lessee further represents and warrants that it has or will obtain adequate financial resources and has the business skill and ability to perform all obligations imposed by this Lease Agreement upon the Lessee to diligently, skillfully and successfully operate the Premises for the purposes intended.

2.07 Subordination. This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the subject property from the United States of America, including the Deed, and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from Lessor, and any existing or subsequent amendments thereto. This Lease and all provisions hereof, are subject and subordinate to any ordinances, rules or regulations, which have been adopted by the Lessor pertaining to the Airport. This Lease and all provisions hereof is subject and subordinate to the provisions of any existing agreement between Lessor and the United States of America relative to the operation or maintenance of the Airport, or the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for development of the Airport, including without limitation the expenditure of federal funds for the development of the Airport under the provisions of the Federal Aviation Act of 1958, as amended from time to time. Any encumbrance created by or through Lessor arising from and after the Effective Date shall be subordinate to this Lease.

ARTICLE 3. TERM

3.01 The term of this Lease shall commence on the date 270 days following the Effective Date ("**Commencement Date**"), provided, however, if the "Rezoning," as hereinafter defined, has not yet occurred by such 270th day following the Effective Date, the Commencement Date shall be extended until the thirtieth (30th) day after the Rezoning has occurred. This Lease shall expire 30 years after the Commencement Date ("**Term**"), unless sooner terminated as provided in this Lease. This Lease may be extended for up to two (2) additional five (5) year terms upon approval by City and after request by Lessee at least six (6) months prior to the expiration of the then current term. As a condition precedent to the Commencement Date, Lessee shall provide Lessor with evidence that it has secured sufficient financing to construct the Project on the Premises and provide Lessor with the Master Plan referenced in Section 12.01 of this Lease.

3.02 Inspection Period. This Lease Agreement is, and shall be, effective on the Effective Date stated herein, provided, however, Lessee shall have the right, from and

after the Effective Date, through and including the later of (a) the date which is Two Hundred Seventy Days (270) after the Effective Date, or (b) thirty (30) days after the Rezoning has occurred (“Inspection Period”) to conduct, at Lessee’s sole expense, inspections, analyses, studies, surveys, title reviews, environmental studies (to include Phase I and Phase II environmental studies) and other tests of the Premises to make application for licenses and permits, and to seek such Applicable Approvals necessary in connection with the development of the Project contemplated on the Premises. Notwithstanding any provision of this Lease to the contrary, and in addition to other termination rights set forth herein, Lessee shall have the option to terminate this Lease Agreement for any reason at any time prior to the end of the Inspection Period by providing notice of such election to Lessor prior to the end of the Inspection Period, whereupon this Lease Agreement shall terminate and be of no further force or effect.

3.03 Lessee shall have the right to review title and survey matters pertaining to the Premises and shall, prior to the end of the Inspection Period, notify Lessor in writing (“**Title Objection Notice**”) of any matters of record adversely affecting the ability of Lessee to use the Premises and develop the Project (“**Title Defects**”). Within sixty (60) days of its receipt of the Title Objection Notice (“**Title Cure Period**”), Lessor, through the City Manager, shall provide Lessee with its written response as to the title matters which Lessor has cured, the title matters Lessor agrees to cure and the title matters which Lessor will not cure. The matters which Lessor has cured and the matters which Lessor agrees in writing to cure are collectively referred to as the “**Agreed Cure Matters**.” Lessor, through the City Manager, shall notify Lessee in writing as to which Title Defects remain uncured or are not Agreed Cure Matters on or before the end of the Title Cure Period, and unless Lessor cures all Title Defects prior to expiration of the Title Cure Period, Lessee, at Lessee’s option, may: (i) accept title to the Premises subject to the Title Defects without adjustment to the Rent, or (ii) terminate this Lease by written notice to Lessor, whereupon both parties shall be released from all further obligations hereunder.

On or before the expiration of the Inspection Period, Lessor, through the City Manager (unless the Title Company shall require from the Mayor or City Commission), shall provide Lessee with a gap, party-in-possession affidavit (subject to section 8.01 of this Agreement) and other documents in form reasonably required by the Title Company to permit the Title Company to insure against exceptions in the title insurance commitment obtained by Lessee (“**Title Commitment**”) with respect to, parties-in-possession and adverse matters first appearing on a date subsequent to the effective date of the Title Commitment and prior to recording the Memorandum of Lease. The Lessor agrees not to take any action after the Effective Date which shall adversely affect the status of title to the Premises.

3.04 Termination prior to Construction. If prior to Commencement of Construction, documented circumstances make the Project not financially viable or sustainable, Lessee shall have the option to terminate this Lease Agreement by giving Lessor thirty (30) days prior written notice and written evidence documenting such lack of financial viability or sustainability. In the event Lessee terminates this Agreement pursuant to

this Section 3.02, Lessee shall be responsible for all Rent payments to Lessor through the date of termination.

ARTICLE 4. RENT

4.01 Rental for the initial term shall be paid subject to the following provisions:

(a) The annual rental (hereinafter "**Rent**") is Eight Hundred and Ten Thousand Dollars and 00/100 Dollars (\$810,000.00), payable in monthly installments, in advance of the month to which applicable, of Sixty Seven Thousand Five Hundred and 00/100 Dollars (\$67,500.00) plus applicable sales tax to the extent sales tax is due on Rent owed to a governmental body and provided, however, if this transaction is subject to an exemption from the obligation to remit sales tax, Lessee shall not be required to pay sales tax on Rent. Payment of monthly rental shall commence on the Commencement Date. Rent will be deferred for an eighteen (18) month period beginning on the Commencement Date. The deferred rent will bear simple interest calculated at the actual return of the city airport account, which rate shall be set once per year on the anniversary of the Commencement Date. The deferred rent and accrued interest will be paid in sixty (60) monthly payments, beginning the sixtieth (60th) month after the Commencement Date.

(b) It is agreed between Lessor and Lessee that the Rent specified above shall be subject to an increase annually beginning one year after the Commencement Date. Such adjustments shall be the greater of a 1% increase or an increase based on the Cost of Living Index, as defined in this Lease Agreement, which adjustment will not be greater than 5% in any given year reset and continuing thereafter annually throughout the term. Adjustments shall be based upon the Cost of Living Index known as the Consumers' Price Index, United States, All Urban Consumers, for the period in which the year 1982-84 = 100, published by the Bureau of Labor Statistics of the United States Department of Labor. For computation purposes, the Numerator and Denominator are defined as follows:

Numerator - The Consumer Price Index for the third (3rd) month preceding each Lease adjustment date.

Denominator - The Consumer Price Index for the month of the Commencement Date of the Lease.

The resulting fraction shall be applied to the Rent to arrive at the new annual rental. Should the Bureau mentioned above discontinue the publication of an Index approximating the Index identified above, then such Index as may be published by another United States governmental agency which most nearly approximates the Index referred to above shall govern and be substituted as the Index to be used, subject to the application of an appropriate conversion factor to be furnished by the governmental agency publishing such Index. At no time shall the annual rent be adjusted below the Rent initially set forth above.

(c) Dishonored Checks. In the event Lessee delivers a dishonored check to draft to Lessor in payment of any obligation arising under this Lease Agreement, the Lessee shall incur and pay any charges assessed to City as a result of the dishonored check or draft. In the event Lessee delivers a dishonored check or

draft, the Airport Manager may require that future payments be made by cashier's check or other acceptable means by making such demand in writing to Lessee.

(d) Place of Payment. All payments required to be made by Lessee under this Lease Agreement shall be made payable to the "City of Fort Lauderdale," and shall be delivered or mailed to the address below, or to an address as may be substituted therefore by the Lessor:

City of Fort Lauderdale
Attn: Department of the Treasury
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

ARTICLE 5. MAINTENANCE

5.01 The Premises, all Improvements, both exterior and interior, and equipment located on them, shall at all times be maintained in good, serviceable, neat, clean and presentable condition, all at the expense of Lessee, it being an express condition of this Lease that the same be kept in such condition at all times.

5.02 Upkeep/Repairs. The Lessee agrees at its expense to keep and maintain that portion of the Premises not constituting Public Assets, including grounds, pavement, buildings, furnishings, fixtures and personal property located thereon in a good state of repair and first-class condition, whether such upkeep be ordinary or extraordinary, structural or otherwise. First class condition is defined as that condition prevailing in other Schlitterbahn waterparks. The Lessee agrees at its expense to keep and maintain that portion of the Premises constituting Public Assets in a good state of repair. Notwithstanding the foregoing, any improvements owned, controlled and operated by Lessor, such as roads and utility lines, shall be maintained by Lessor. Should the Lessee fail to commence required corrections within thirty (30) days from receipt of written notice of such required corrections from Lessor (as such 30-day period is extended due to events of Force Majeure), the Lessor shall have the right to enter the parcel, or improvements thereto, correct the deficiency, and recover the cost of such activities from Lessee as rent due on the next rent payment date.

5.03 Lessor's Repairs. Lessor, its officers, employees, agents, representatives and contractors shall have the right, to maintain existing and future utility, mechanical, electrical and other systems and, upon no less than 48 hours' prior written notice to Lessee (other than in the event of an emergency threatening immediate bodily harm or property damage, in which case no written notice shall be required but Lessor shall nevertheless use all commercially reasonable efforts to notify Lessee), to enter the Premises at all reasonable times to make such repairs, replacements or alterations as deemed appropriate by Lessor. In the exercise of such rights of access, repair, alteration or new construction, Lessor shall not interfere with the actual use and occupancy of the Premises by Lessee or any Sub-Lessee.

5.04 Repair of Damage.

Minor Damage. If a portion of the Premises not constituting Public Assets or Improvements thereto are partially destroyed or damaged by fire or other casualty but not rendered untenable or unusable, then Lessee shall repair and restore that portion of the Premises not constituting Public Assets or improvements thereto as soon as it is reasonably practicable and in accordance with any applicable Sublease. Such repair or restoration shall commence not later than six (6) months after issuance of all required permits, and be prosecuted with due diligence by and at the expense of Lessee or applicable Sublessee and all insurance proceeds shall be made available to Lessee, Sublessee or their mortgagee (as applicable) for that purpose. Such restoration shall be to substantially the same condition in which those portions of the Premises not constituting Public Assets or Improvements thereto were before such damage. Lessor acknowledges that Lessee is not insuring and is not responsible for restoration, repairs or rebuilding of the Public Assets following a casualty loss.

Major Damage. If that portion of the Premises not constituting Public Assets or Improvements thereto are destroyed or so damaged by fire or other casualty as to render it untenable or unusable, then, subject to the rights of any affected mortgagee or Sublessee, Lessee shall within 60 days following issuance of all required Governmental Approvals (a) commence to repair or restore in accordance with the provisions of this paragraph, or (b) terminate this Lease by notice to Lessor, which termination shall be deemed effective as of the date of such casualty. Should Lessee elect not to terminate this Lease, Lessee shall commence necessary repairs or replacements for the restoration thereof to provide for a comparable amount of square footage to that which was damaged within six (6) months from the issuance of all required permits and to diligently pursue completion of such repair or restoration. If the damage or destruction was covered by insurance, the proceeds thereof shall be adjusted with and paid to Lessee (or its Sublessee or mortgagee, as applicable). Rent shall equitably abated from the date of such casualty until such portion of the Premises has been restored to a usable condition. If Lessee terminates this Lease pursuant to this paragraph, Lessee shall surrender the Premises to Lessor immediately and assign to Lessor (or if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in all insurance proceeds, subject, however, to the rights of any Leasehold or Subleasehold Mortgagee (as herein defined), as applicable. Lessor acknowledges that Lessee is not insuring and is not responsible for restoration, repairs or rebuilding the Public Assets following a casualty event.

Public Assets. Lessor shall, at all times during the Term and at no expense to Lessee, carry all-risk property damage insurance on all of the buildings and Improvements from time to time constituting the Public Assets for the full replacement cost of such buildings and Improvements. Such policies of insurance shall be issued for periods of not less than one (1) year by responsible insurance companies authorized to do business in the state of Florida. All loss proceeds payable under the insurance required of Lessor under this paragraph shall be disbursed and utilized solely for the purpose of repairing and restoring the Public Assets. Upon request by Lessee, Lessor shall cause the insurance carrier or its authorized representatives to issue to Lessee certified copies of the certificates evidencing the existence in full force and effect of fully paid policies

required under this paragraph. The certificates of insurance issued by the carrier or its authorized representatives shall provide that no cancellation shall be effective until at least thirty (30) days after mailing of written notice thereof to Lessee. Upon request by Lessee delivered not less than sixty (60) days prior to the expiration of any policy of insurance, Lessor shall deliver to Lessee, not less than thirty (30) days prior to the expiration of such policy of insurance, a certificate evidencing renewal or replacement of such policy of insurance effective no later than the expiration date of the current policy. In addition, Lessor shall deliver to Lessee, upon request, a copy of Lessor's policy of property damage insurance. If all or any portion of the Public Assets or Improvements thereto are destroyed or so damaged by fire or other casualty, Lessor shall rebuild, repair or restore such Public Assets at Lessor's sole cost.

5.05 Repair and Maintenance of Public Assets. Until the Commencement Date, Lessor shall, at its expense, maintain and operate the Public Assets. Following the Commencement Date, Lessee shall maintain the four soccer fields but shall have no responsibility to maintain Lockhart Stadium until such time as Lessee has sole control over Lockhart Stadium, as more fully described in Section 8.01 of this Lease. Notwithstanding anything in this Lease Agreement to the contrary, prior to the Commencement Date, Lessor shall establish, by resolution, a surcharge to be added to the cost of each entrance ticket to the Project and the Public Assets in an amount determined by Lessee, in an amount not to exceed \$1 per ticket, such surcharge to be collected, remitted and used as follows:

- a) Lessee shall create a separate account into which all surcharge revenue will be deposited, and Lessee shall be responsible for collecting the surcharge.
- b) Lessee shall retain ninety-seven percent (97%) of the surcharge up to the annual Rent amount under this Lease and remit three percent (3%) of the surcharge to the Lessor as an administrative fee.
- c) Remittances to Lessor shall be paid by January 31st of each calendar year during the Term without any additional grace period and accompanied by a an audit of the account prepared by a certified public accountant licensed to do business in the State of Florida and retained by Lessee, which audit shall detail all ticket sales and collected surcharge funds for the prior calendar year.
- d) Lessee may use funds from the surcharge account for maintenance and repair of the Public Assets and those portions of the Project outlined in **Exhibit E** attached hereto and made a part hereof, and payment of insurance premiums due for the pollution and remediation insurance to the extent required under Section 17.02(e).
- e) The not to exceed amount of \$1 per ticket shall be increased by \$0.25 on each five year anniversary of the Commencement Date.
- f) Additional funds remaining in the account exceeding the annual Rent generated from the lease of the Premises shall be remitted to Lessor every two years on the anniversary of the Commencement Date for the prior Lease year, such remainder funds will be considered general revenue of the Lessor and may be expended for any lawful public purpose, however, one year of excess surcharge funds shall continue to remain in the account and roll over each year as a reserve for maintenance and repair costs as set forth in Section 5.05 (d) above. All excess funds are due immediately upon the termination or expiration of this Lease.

g) All funds and use of funds by Lessee are subject to annual audit by the City. If it is found that funds have not been used in accordance with this Agreement, Lessee shall upon 30 days written notice by the City repay to City all incorrectly used funds.

ARTICLE 6. FAA APPROVAL

6.01 This Lease is specifically conditioned upon approval in writing by the FAA, signed by an authorized representative of that agency. The date of approval by the FAA shall be the Effective Date of the Agreement. If, however, FAA approval has not been obtained by November 1, 2014 Lessee shall have the right to terminate this Lease within 30 days thereafter, with no further obligations hereunder.

ARTICLE 7. GENERAL OBLIGATIONS OF THE PARTIES.

The following constitute obligations and covenants of the parties, their successors and assigns:

7.01 Compliance with Regulations of Public Bodies. Lessee covenants and agrees that it will, at its own cost, make such improvements on the Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Premises, in order to comply with all applicable laws, regulations, rules, orders and ordinances relating to the environment, sanitation, fire hazard, zoning, setbacks and other similar requirements designed to protect the public. Certain provisions of this Lease may require the City and/or its boards, departments or agencies, acting in their governmental capacity, to consider certain changes in the City's Comprehensive Land Use Master Plan and/or Unified Land Development Regulations or take other governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of applicable state statutes, and the City of Fort Lauderdale Charter and City of Fort Lauderdale ordinances, in the exercise of the City's jurisdiction under its police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on such applications by virtue of the fact that the City may have consented to such applications as a property owner or Lessor.

7.02 No Liens Created. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Premises covered by this Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's leasehold interest in the Premises by a Leasehold Mortgagee, pursuant to Article 23, below. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, the Lessee shall discharge it within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. The Lessee shall not be deemed to be the agent of the Lessor, so as to confer upon a laborer bestowing labor upon the Premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Premises, a lien upon the Lessor's estate under the provisions of Chapter 713, Florida Statutes, (2014), and subsequent revisions of that law.

7.03 Operating Costs.

(1) The Lessee agrees promptly to pay when due, all operating, maintenance and servicing charges and costs, including telephone, gas, electricity, water, utility connections, and all other expenses incurred in the use and operation of the Premises.

(2) The Lessee agrees to obtain at its expense all permits and licenses which may be required by any governmental unit to develop and operate the Project. Upon the Lessor's written request, at reasonable intervals, the Lessee shall promptly furnish to the Lessor evidence satisfactory to the Lessor showing Lessee's compliance with its obligations under this section.

7.04 Insolvency of Lessee. Subject to the provisions of Article 23, should the Lessee, at any time during the term of this Lease, make any assignment for the benefit of its creditors, or should a receiver be appointed for the Lessee's property because of the Lessee's insolvency and the appointment not vacated within thirty (30) days thereafter, or should the Lessee's leasehold interest be levied on and the lien not discharged within sixty (60) days after levy has been made, or should the Lessee fail to promptly make the necessary returns and reports required of it by state and federal law, or should the Lessee fail promptly to comply with all governmental regulations, both state and federal, and should such failure in any manner threaten the fee ownership of the Premises by Lessor, then, and in such event, and upon the happening of any of these events, the Lessor shall have the right, at its election, to consider the same a default on the part of the Lessee of the terms and provisions of this Lease, and, in the event of such default not being cured by the Lessee within a period of thirty (30) days from the date of the giving by the Lessor of written notice to the Lessee of the existence of such default, the Lessor shall have those remedies as set forth in Article 15 of this Lease, subject, however, to the rights of any Leasehold or Subleasehold Mortgagee as set forth in Article 23.

7.05 Bankruptcy of Lessee. Subject to the provisions of Article 23, should the Lessee, at any time during the term of this Lease, institute a proceeding under Chapters 7, 11, or 13 of the Bankruptcy Code or as they may be amended from time to time, the Lessee agrees to provide adequate assurance of future performance to the Lessor to the extent required by the Bankruptcy Court and all obligations of the Lessee must continue to be performed in accordance with the terms of the Lease.

7.06 Taxes. For each year of the term of this Lease the Lessee agrees to pay when due all taxes and special assessments of whatsoever kind levied and assessed against the Premises, and all Improvements built and placed on them by the Lessee. On or before March 31 of each year during the term of this Lease, the Lessee agrees to deliver to the Lessor official tax receipts showing the payment by the Lessee of all taxes and special assessments. The Lessee further agrees to pay when due all ad valorem property taxes, sales and use taxes, special assessments and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Lease Agreement, including any sales taxes due on rental payments and sales taxes due on ad valorem property taxes remitted to Lessor to the extent required to be paid. To the extent permitted by law, Lessee shall be permitted to pay any assessments in annual installments and to the extent such assessments may be payable in installments, then Lessee shall only be required to pay those installments which shall become due and payable during the Term.

It is the intent of both parties that the Public Assets portion of the Premises will continue to be used for public purposes, however, both parties recognize that the Broward County Property Appraiser, in its sole discretion, determines whether any portion of the Premises will be exempt from ad valorem taxation. The Lessee shall, within the applicable time periods as set forth by the Broward County Property Appraiser or Tax Collector, have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Premises or buildings, other structures or improvements on them and in case any such taxes, assessments, or other charges shall, as a result of such proceedings or otherwise, be reduced, canceled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or imposed against the Premises or buildings, other structures or Improvements which are finally determined to be due and payable on any such disputed or contested items. Lessor, through the City Manager, shall cooperate with Lessee's efforts to contest Taxes, at no cost to Lessor. If requested in writing by Lessor, Lessee shall deposit any disputed sum, including any applicable penalty fee, with an escrow agent mutually selected by the parties, for the protest period. All expenses of such litigation, including court costs, shall be paid by Lessee free of all expense to Lessor. If, as a result of any legal proceeding pursuant to the provisions of this section, there is any reduction, cancellation, setting aside or discharge of any such tax or assessment or other charges, the applicable refund shall be payable to the Lessee, and if such refund be made to the Lessor, then the Lessor shall hold such refund in trust and shall immediately pay over the same to the Lessee. The term "legal proceeding," as used above, shall be construed as including appropriate appeals from any judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them.

7.07 Quiet Enjoyment. Lessor agrees that Lessee shall be entitled peacefully to enjoy, to occupy and to possess the Premises throughout the Lease term without interference, hindrance or molestation.

7.08 Surrender. At the expiration or termination of this Lease, Lessee shall, at its expense, remove all Lessee-installed Improvements, personal property, furniture, fixtures and equipment (except the Public Assets), and deliver the Premises to the Lessor in a good state of repair. Unless otherwise set forth in this Lease, all Improvements and all fixtures, structures, facilities and other leasehold improvements and any additions and alterations made to the Premises (including those that are nailed, bolted, stapled or otherwise affixed to the Premises) by Lessee, or at Lessee's direction, shall be and remain Lessee's property until the expiration or termination of this Lease. Lessee may remove all or any such fixtures, structures, facilities and other leasehold improvements at any time and from time to time. The Lessee shall at its expense take all actions required by federal, state, local and City laws, rules and regulations to remove or have removed from the Premises all hazardous substances (other than those introduced to the Premises by Lessor, or Lessor's employees, contractors and agents, or which existed prior to the Commencement Date), however stored, and whether or not such hazardous substances or materials have been discharged into the ground. All such hazardous substances and materials shall be removed by the Lessee in a manner that complies with all applicable federal, state, local and City laws, rules and regulations and the provisions of Article 34 shall be applicable. Commencing upon construction following the Commencement Date, Lessee shall provide the Demolition Bond. The Demolition Bond shall be in the amount necessary to remove all Lessee-installed

Improvements, personal property, furniture, fixtures and equipment from the Premises excluding such Improvements on the Public Assets, and shall remain in effect for one (1) year following the issuance of Certificate of Occupancy or Certificate of Completion, whichever is applicable, for the waterpark component of the Project. Lessor and Lessee shall be named as dual obligees under such Demolition Bond.

7.09 Receipts. Lessee shall, upon written demand by Lessor, obtain and deliver to Lessor receipts, satisfactions and discharges showing the payment of any obligation required of Lessee by Lessor.

7.10 Signs. All signs or any advertising erected, maintained or displayed at or on the Premises or upon any Improvements shall comply with the Sign Code of the City of Fort Lauderdale (Section 47-22, Uniform Land Development Regulations) and all other applicable local, state and federal laws, rules, regulations and ordinances pertaining to signage. Lessor, through the City Manager, shall cooperate with Lessee in securing approval from the Florida Department of Transportation (“**FDOT**”) and any other governmental agency for directional signage to the Project from area streets. All such signs shall be installed at Lessee’s expense. Upon the expiration or earlier termination of this Lease, Lessee shall remove, obliterate or paint out, as directed by City, all signs and advertising on the Premises and, in connection therewith, shall restore the portion of the Premises affected by such signs or advertising to the same condition as the same existed prior to the placing thereon of such signs or advertising. In the event Lessee fails to remove, obliterate or paint out each and every sign or advertising and to restore the Premises, the City may, after written notice to Lessee with an opportunity to cure, perform the necessary work and the Lessee shall pay the costs thereof to the City upon demand.

7.11 Public Use of Lockhart Stadium and Soccer Fields:

- (1) To ensure the preservation and enhancement of the public beneficial enjoyment of Parcel 26 (Lockhart Stadium) of the Premises, Lessee shall maintain Lockhart Stadium and construct 4 new soccer fields, all of which shall be deemed “Public Assets”) in accordance with the Conceptual Site Plan attached hereto as Exhibit B. The Public Assets shall be managed by Lessee and, subject to Lessee’s scheduling of events, available for use by the public, provided, however, Lessee shall provide Lessor with no fewer than 75days’ use of the soccer fields without charge (with the use of any portion of the soccer fields for any partial day constituting a full day for purposes of calculating such 75days). Lessee’s maintenance obligations shall not, however, include capital improvements or replacement, other than to the extent necessary to maintain Lockhart Stadium in the condition existing on the Effective Date. All other capital improvements to the Public Assets, including those necessary following a casualty or condemnation event, shall be the sole responsibility of Lessor.
- (2) Simultaneously with the execution of this Agreement or at any time during the Term, Lessee may enter into a sublease agreement with Miami FC, L.L.C. d/b/a Fort Lauderdale Strikers (or a successor organization), allowing for use of the Public Assets for a time period concurrent with the term of this Lease, commencing at the end of the term of the current agreement with the City as set

forth in Section 8.01 (1) below, the effectiveness of such sublease will be subject to this Agreement being in effect.

7.12 Fireworks. The use, display or storage of any fireworks is prohibited on the Premises.

7.13 Noise. The Lessee shall comply with all applicable noise regulations of the City.

7.14 Hours of Operation. The waterpark component of the Project shall close to the public no later than 11:00 p.m. and all other components of the Project shall close by midnight daily. Resort lodging, however (and internal food and beverage operations incidental to such lodging), may operate 24 hours per day.

ARTICLE 8. POSSESSION

8.01 The parties acknowledge that delivery of possession of the Premises to the Lessee is contemplated to occur on the Commencement Date of this Lease subject to the below:

The portion of the Premises known as Parcel 26 (Lockhart Stadium) is currently used by Miami FC, L.L.C. d/b/a Fort Lauderdale Strikers under a license agreement with the City. Possession of that Parcel will be deemed delivered to Lessee on the Commencement Date, however, prior to the Commencement Date, Lessee shall enter into a sublease or license agreement with Miami FC, L.L.C. d/b/a Fort Lauderdale Strikers (or a successor organization), allowing for use of the Public Assets beginning on the Commencement Date through December 15, 2015, subject to this Agreement being in effect.

ARTICLE 9. EASEMENTS AND PUBLIC RIGHTS OF WAY

9.01 The Lessee shall convey to the Lessor at mutually acceptable locations any subsurface easements under the Premises that may be required for the installation of utilities. It is understood that should any such easements be required, they will be compatible with any existing or proposed Improvements of the Lessee and that Lessee shall enjoy the surface right uses for parking and landscaping. It is further agreed that if it becomes necessary to relocate or remove any easement for the sole benefit of Lessor, then the cost of such removal or relocation shall be at the Lessor's expense. Lessor covenants and agrees that it will promptly execute and deliver any and all instruments that may be required of the Lessor in connection with the granting of easements for installation of water, gas, electricity or telephone services to the various utility companies affecting any part of the Premises, without expense to the Lessor, so long as this Lease or any sublease under this Lease is in effect.

9.02 Right of Way. Lessor represents and warrants that Lessee shall have the right of ingress and egress to and from public thoroughfares, such that at all times during the Term of this Lease Agreement, Lessee, its successors and assigns and their respective guests and invitees shall have vehicular ingress and egress to and from the Premises from public thoroughfares. Notwithstanding the above and upon no less than 72 hours' prior written notice, the City may, from time to time, temporarily substitute other suitable means of ingress and egress so long as an alternate adequate means of access is available. The City may upon such 72 hours' prior written notice to Lessee temporarily close, or consent to, or request the closing of any such roadway in order to perform maintenance or make improvements, so long as in each such instance, such action is

undertaken in a diligent manner with the least amount of interruption to Lessee. If requested by Lessee and necessary for the completion of the Project, Lessor agrees to work with Lessee to either enter into a license agreement or vacate roads in order for Lessee to develop the Project.

ARTICLE 10. REZONING/COOPERATION

10.01 The Lessor shall undertake or, at Lessee's election and as may be required by law, be co-applicant with Lessee for the rezoning of the Premises. The Rezoning is a condition to Lessee's obligations under this Lease, and if the Rezoning is not accomplished by the first anniversary of the Effective Date, Lessee shall have the right to terminate this Lease. Should the Lessor undertake the Rezoning, prior to any applications being submitted, such applications shall be provided to Lessee for Lessee's approval. The Rezoning shall not be deemed to have been completed until all appeal periods have expired. In addition to the foregoing obligations, Lessor shall cooperate with Lessee in Lessee's efforts to secure other Governmental Approvals for the Project, and, where permitted by applicable law or ordinance, expedite internal reviews and permit issuance.

ARTICLE 11. INSPECTION OF PREMISES

11.01 The Lessor or its agents shall have the right to enter the Premises and the buildings and Improvements constructed on them after normal opening hours for the Project for the purpose of inspecting them, or for any other purposes not inconsistent with the terms of this Lease, consistent with reasonable security measures of the Lessee and upon at least 48 hours prior written notice. Lessor agrees that such right will not be exercised arbitrarily or in a manner that would unnecessarily disturb occupants of the Premises, except in cases involving public safety or police emergency. This right of entry shall impose no duty on the City to take any such action and shall impart no liability on the City should it not take such action.

ARTICLE 12. APPROVAL OF CONSTRUCTION

12.01 The Lessee is required to construct or maintain Improvements on the Premises as summarized in Exhibit B in accordance with the Project Schedule attached as Exhibit C.

- a) Prior to Commencement of Construction on any portion of the Premises by the Lessee, the Lessee shall submit to Lessor the Master Plan including proposed architectural features of the improvements to be constructed. Such Master Plan and architectural features of the Improvements to be constructed shall be subject to approval of the Lessor through its City Commission, provided, however, if such Master Plan is consistent with the Conceptual Plan and the uses contemplated in Section 1.01 of this Lease, such approval shall not be unreasonably withheld, conditioned or delayed. Such Master Plan approval shall not constitute a building permit. Upon approval of the Master Plan, Lessee has the option to phase construction of the individual items within the Master Plan within seven (7) years (as may be extended due to events of Force Majeure) of approval without the requirement of resubmitting to the Lessor. No approval provided for herein

shall be construed as relieving Lessee of any requirement contained in any applicable City, County, State or Federal law or regulation. Lessee shall be responsible at its sole cost and expense, to apply for and secure all necessary City, local, County, State, and Federal permits for the construction of Improvements on the Premises. This shall include, but not be limited to, applications for vacation of rights-of-way. Lessor, shall provide its written approval or disapproval of the Master Plan (specifying the basis for disapproval and/or comments to any plans), where required, within twenty (20) days of receipt of request for same. In the event Lessor shall fail to approve or disapprove (and specify the basis for such disapproval) any plans submitted by Lessee which require approval within twenty (20) days of being submitted to Lessor, and Lessor has not requested an extension to such time period from Lessee, which approval shall not unreasonably be withheld, then the Lessor shall be deemed to have approved such documents.

- b) All construction of Improvements shall be performed in such a manner as to provide that the Improvements shall:
- (1) Be structurally sound and safe for human occupancy, and free from any hazards and be constructed in compliance with all applicable codes.
 - (2) Shall not intrude into any aeronautical surfaces or exceed any height limitations and shall not interfere with operations or arriving and departing aircraft at the Airport and shall not conflict with any items of the FAA-approved Airport Layout Plan for the Airport.
 - (3) Comply with the provisions of the Deed under which Lessor acquired title to the airport from the United States of America, and the provisions of any grant agreements between the Lessor and the United States Government or the State of Florida that are applicable to the Premises.
 - (4) Comply with the terms and provisions of this Lease.
 - (5) Lessor reserves the right to require that all development within the Airport is consistent with the Airport Master Plan, as well as being consistent with reasonable standards of safety and quality.
- c) It is understood and agreed that in the course of any construction undertaken by Lessee during the term of this Lease, Lessee shall be responsible for all costs associated with any removal, replacement, relocation and protection of all utilities, whether such utilities are located at the Premises or on adjacent property, including but not limited to water, sewer, telephone, electric, airfield lighting system, and Federal Aviation Administration navigational aid system.
- d) All Improvements and equipment constructed or installed by Lessee, its agents or contractors, including the plans and specifications relating to the same, shall comply with all applicable state, federal, City and local ordinances, statutes, building codes, fire codes, regulations and rules. The approval by City staff or officers of any plans, specifications or designs shall not constitute a representation or warranty as to such compliance, and the responsibility therefore shall at all times remain with Lessee.

- e) All Improvements and equipment constructed, installed, operated or maintained on the Leased Premises shall at all times comply with applicable federal, state or local ordinances, statutes, rules or regulations pertaining to environmental protection and regulation.
- f) No work impacting any portion of the Airport other than the Premises shall be performed.
- g) Lessee shall coordinate all Improvements to and construction on the Premises with the City and FAA, including the filing of the required forms and the provision of any documentation the City or FAA may request or require.
- h) All Improvements hereafter made to the Premises shall comply with the provisions of the Americans with Disabilities Act of 1990, as the same may be amended from time to time.
- i) Lessee acknowledges the Premises, including the land, belong to the City. Therefore, Lessee shall not dispose of any fill, dirt, and sand at any time, except in accordance with a plan approved by the Airport Manager. Lessee may, however, relocate fill, dirt and sand within the Premises.

12.02 Lessor agrees to cooperate with Lessee in seeking Applicable Approvals for the Project, including the execution of applications to the extent property owner approval is required by any applicable Governmental Approval.

12.03 Notwithstanding the foregoing, Lessee may revise the Master Plan and plans and specifications for the Improvements due to (i) a change which is required to be made to comply with applicable governmental requirements; (ii) a change which involves only substituting materials of comparable or better quality; (iii) any change with respect to the interior portions of the Improvements; (iv) a change required by the failure of the Approved Plans to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of such Improvements; and (v) a change which is made to correct inconsistencies in various plans and specifications; it being understood and agreed that any change that affects the Public Assets shall require the Lessor's approval

ARTICLE 13. WAIVER OF LIENS

13.01 All fixtures, computers, software, intellectual property, name rights, office supplies, maintenance and repair equipment, any other equipment, smallwares, supplies, furniture, slides, towers, pumps and filtration equipment which are part of the amusement rides on the Premises, signs, inventory, proprietary information, and all other personal property of Tenant or any subtenants and reasonably removable fixtures which are installed or placed in or upon the Premises by Lessee or any Sublessee (collectively, the "**Trade Fixtures and Personalty**") shall remain the property of Lessee. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to the extent Lessor may have a statutory, constitutional, contractual, common law or other lien on or security interest in the Trade Fixtures and Personalty, Lessor hereby waives, releases and relinquishes, and agrees not to assert, such liens and security interests. Lessor agrees to provide Lessee, within ten (10) days of request therefore, a written waiver in form reasonably satisfactory to Lessee and any lender of Lessee confirming and evidencing Lessor's waiver of any rights it has or may have in Trade Fixtures and Personalty. Notwithstanding anything

herein to the contrary, if upon expiration or termination of this Lease, Lessee fails to remove all Trade Fixtures and Personalty in compliance with Section 7.08 of this Lease, subject to the rights of any Leasehold Mortgagee and/or Subleasehold Mortgagee as set forth in Article 23, Lessor shall have the right, without any further notice requirements, to remove and dispose of all Trade Fixtures and Personalty without any liability to the Lessee or any other party claiming an interest.

ARTICLE 14. CONDEMNATION

14.01

(a) In the event of a taking of all of the Premises or so much of them so as to render the Premises unfit for purposes intended by this Lease, for any public or quasi-public purpose, under any statute or by right of eminent domain, this Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time Rent and all other sums due from Lessee under this Lease shall cease. The Lessee shall first receive from the condemning authority (and Lessor shall reserve Lessee's rights to obtain compensation) the value of its leasehold interest and the value of all buildings, other structures and improvements erected upon the Premises by the Lessee, subject to the rights of any Sublessee and/or any Leasehold or Subleasehold Mortgagee, and any other valid claims allowed by law. Thereafter, unless the condemning authority is the City (in which case the entire award shall be paid to Lessee), the Lessor shall be entitled to the balance of the condemnation award (i.e. the interest in the fee and reversionary interest in the Improvements).

(b) In the event of a partial taking by condemnation or eminent domain, as described above, so that the part not so taken shall be sufficient for the continued operation of the Project for the purpose intended by the Lessee, then this Lease shall continue in full force and effect, and the rental shall be reduced in accordance with the section below, and the Lessee shall be entitled to any claim against the condemning authority that the Lessee may be entitled to because of the loss of buildings, other structures or improvements erected upon the Premises by the Lessee, subject to the rights of any Sublessee and/or any Leasehold or Subleasehold Mortgagee. The Lessee shall use the proceeds received by the Lessee pursuant to this section for purposes of restoring those portions of any buildings, other structures and improvements upon the remainder of the Premises to as near their former condition as circumstances will permit.

(c) In the event of a partial taking by condemnation or eminent domain, as provided above, the rental payable shall be reduced by an equitable amount based on the impact of such taking or condemnation.

ARTICLE 15. GRACE PERIOD; DEFAULT

15.01 Time of the essence. The Lessee agrees promptly to perform, comply with and abide by this Lease, and agrees that time of payment and of performance are of the very nature and essence of this Lease.

15.02 Default in rent; grace period. Except as otherwise provided in Article 23 of this Lease, the Lessee shall have a grace period of thirty (30) days within which to pay any and all sums of rent due, which sums shall be due and payable without further notice or demand, which Lessee waives.

15.03 Default in other provisions; grace period. If Lessee shall default in the performance of any other term of this Lease (except the payment of rent), then the Lessor, or its agent, shall send to the Lessee a written notice of default, specifying the nature of the default, and Lessee shall, within thirty (30) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before, provided, however, such thirty (30) day period shall be extended when fulfillment of Lessee's obligations requires activity over a greater period of time, and the Lessee shall have commenced whatever may be required for fulfillment within thirty (30) days after receipt of written notice from Lessor and continues such performance without material interruption.

15.04 Remedy. If any sums of money required to be paid by the Lessee to the Lessor shall, subject to Article 23 of this Lease, remain unpaid for a period of thirty (30) days after written notice from Lessor, or Lessee shall fail to cure any non-monetary defaults in accordance with the requirements of Section 15.03, then the Lessor may, at its option, immediately terminate the rights of Lessee hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or Lessor may exercise any and all other remedies available to Lessor hereunder or at law or in equity, subject to the terms of any existing Non-Disturbance Agreements, and provided the exercise by Lessor of such remedies shall not affect any non-disturbance agreement. In the event of termination, Lessee shall be liable for all compensatory damages incurred by Lessor in connection with Lessee's default, provided, however, Lessor shall not be entitled to punitive or consequential damages, nor shall Lessor have the right to accelerate rent. Lessor shall use all commercially reasonable efforts to mitigate its damages in all instances of Lessee's default.

15.05 No waiver. No acceptance by the City of rent, fees, charges or other payments in whole or in part for any periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the City to terminate this Lease, or to exercise any other available remedies.

15.06 Upon expiration or earlier termination of this Agreement, Lessee shall remain liable for all obligations and liabilities that have accrued after the date of this Lease and prior to the date of expiration or termination.

15.07 The Lessor shall have the option, after thirty (30) days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of the Lessee, and the amount of any such payment and the value of any such performance, together with interest on them, shall be secured by this Lease, and shall be promptly due and payable to the Lessor.

15.08 Lessor's default/Lessee's remedy. If Lessor shall fail to perform any of its obligations as required by this Lease or if Lessor fails to pay to Lessee any amounts owed by Lessor to Lessee, and if Lessor shall fail to cure such failure within thirty (30) days of written notice from Lessee (provided, however, such thirty (30) day period shall be extended when fulfillment of Lessor's obligations requires activity over a greater period of time, and the Lessor shall have commenced whatever may be required for fulfillment within thirty (30) days after receipt of written notice from Lessee and continues such performance without material interruption), then Lessee shall have its

rights and remedies at law or in equity and Lessee may also elect to: (i) take such steps as may be necessary to cure Lessor's default, in which event Lessee shall be entitled to recover from Lessor all direct, third-party amounts expended by Lessee for said purposes, together with reasonable attorneys' fees, and if Lessor fails to pay to Lessee such amounts within one (1) month after written demand therefor, then Lessee shall be entitled to deduct such amounts from any amounts owed by Lessee to Lessor, and/or (ii) terminate this Lease. Notwithstanding the foregoing, Lessee shall not be entitled to punitive or consequential damages, and Lessee shall use all commercially reasonable efforts to mitigate its damages in all instances of Lessor's default.

ARTICLE 16. RIGHT OF FIRST REFUSAL

16.01 Lessor hereby agrees not to sell or convey the Premises, or any portion thereof, to any person, firm or company during the Term of this Lease, except under the following terms and conditions:

- (1) Lessee is herein granted the right to purchase the real property comprising the Premises and all of Lessor's interests in such property, upon equal terms to any bona fide offer the Lessor intends to accept.
- (2) Lessor, upon receipt of a bona fide offer for purchase of the Premises by a third party which Lessor intends or is otherwise inclined to accept, shall promptly provide a complete copy of the offer to Lessee, which offer shall at a minimum set forth the proposed terms and provision of the sale including the purchase price, terms of payment, and such additional information as may be needed by Lessee to obtain a full understanding of the terms of the proposed sale.
- (3) Lessee shall thereafter have a period of twenty (20) days within which to exercise in writing its option to purchase the Premises upon the same terms, covenants, and conditions as those set forth in the original bona fide offer.
- (4) Failure of Lessee to exercise such option within such twenty (20) day period of time shall terminate Lessee's right of first refusal as to that transaction (but not as to any subsequent transaction if Lessor fails to close on the sale Lessee rejected) and Lessor shall be free to proceed with a sale of the property in strictly in accordance with the terms of the original offer to purchase. If Lessee does not exercise its right of first refusal, and Lessor fails to close on the sale of the property with the offering third party under the terms of the offer within 90 days after Lessee declines or is deemed to decline the offer, the property will again be subject to this Article 16.
- (5) The exercise of the option by Lessee shall be upon the exact same terms, covenants and conditions as set forth in the original offer.
- (6) The right of first refusal shall remain in full force and effect throughout the Term (as may be extended) of this Lease Agreement.

ARTICLE 17. HOLD HARMLESS CLAUSE; INSURANCE

17.01 Lessee agrees to defend with competent counsel selected by the Lessee and reasonably approved by the Lessor, through its City Attorney (provided, however, the Lessor shall accept counsel selected by Lessee's insurance company for any action

covered by insurance), any and all claims and actions against Lessor regarding, arising from, connected with or pertaining or as a result of Lessee's negligence or breach of this Lease or the death of or injury to any third party, or the loss or damage to the property of any third party arising out of or occurring during the Lessee's occupancy or use of the Premises, but excluding deaths, injuries and the property loss or damage which arise out of the wrongful or negligent acts or omissions of the Lessor...The Lessee further agrees to indemnify and hold harmless the Lessor, its elected officials, officers, employees and agents from any and all claims, actions, costs, expenses, compliance costs, losses, fines, damages and liabilities, including reasonable attorneys' fees and costs, regarding, arising from, connected with or pertaining to Lessee's negligence or breach of this Lease or the death of or injury to any third party, or the loss or damage to the property of any third party arising out of or occurring during the Lessee's occupancy or use of the Premises, but excluding deaths, injuries and the property loss or damage which arise out of to the wrongful or negligent acts or omissions of the Lessor. This indemnification provision shall survive the termination of this Lease Agreement and shall not be limited by any insurance requirements set forth herein. Additionally, this provision shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.

17.02 The parties further agree to the following provision pertaining to insurance:

All insurance coverages are to remain in force at all times during the Term. The following minimum insurance coverage is required. The City is to be added as an "additional insured" with relation to General Liability Insurance. This MUST be written in the description section of the insurance certificate, even if you have a check-off box on your insurance certificate. Any costs for adding the City as "additional insured" will be at the Lessee's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any stipulated insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Lessee to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the City's Airport Manager.

The Lessee's insurance must be provided by an A.M. Best's "A-" Class VII rated or better insurance company authorized to issue insurance policies in the State of Florida. Any exclusions or provisions in the insurance maintained by the Lessee that precludes coverage for work contemplated in this Agreement shall be deemed unacceptable, and shall be considered breach of contract.

Property Insurance Coverage. The Lessee, at its expense, shall provide proof of all-risk property insurance, including flood and windstorm, coverage on any improvements constructed on the that part of the Premises other than the Public Assets by the Lessee or the Lessor, for the benefit of the Lessor and the Lessee, in an amount of at least 100% of the replacement value of the property and

improvements. All rights of subrogation shall be waived against Lessor under the property insurance policy. Lessor acknowledges that Lessee is not insuring the Public Assets, and, as such, Lessee shall have no obligation to repair or restore such Public Assets following any casualty event. Lessor shall be solely responsible to insure the Public Assets per Section 5.04 of this Lease.

(a) Workers' Compensation and Employers Liability Insurance Coverage. The Lessee, at its expense, shall provide proof of workers' compensation insurance. The workers' compensation insurance must be in compliance with Florida Statute 440. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. Employers liability coverage should be at a minimum in the amounts provided by applicable State statute. Lessee waives any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise.

(b) Commercial General Liability Insurance Coverage. The Lessee, at its expense, shall provide proof of commercial general liability insurance in an amount not less than \$2,000,000 per occurrence, with an aggregate of \$25,000,000 of excess coverage. This coverage must include, but is not limited to, coverage for the liability assumed by the Lessee under the indemnity provisions of this Agreement, coverage for premises/operations, products/completed operations, broad form contractual liability and independent contractors. Lessee waives any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise.

(c) Business Automobile Insurance. The Lessee, at its expense, shall provide proof of automobile liability insurance in an amount not less than \$1,000,000 per occurrence combined single limit for both bodily injury and property damage, including coverage for owned, hired, borrowed and non-owned vehicles.

(d) Pollution and Remediation Legal Liability Insurance. Should Lessee store Materials defined as hazardous under The Comprehensive Environmental Response, Compensation,

and Liability Act (“**CERCLA**”) in above or below ground tanks, the Lessee, at its expense, shall provide proof of pollution and remediation legal liability insurance in an amount not less than \$1,000,000 per incident and \$2,000,000 aggregate. The premiums for such insurance, and deductibles under such policies may be paid from funds collected by Lessee as part of the surcharge described in Section 5.05 of this Lease.

(e) Policies. All of the policies of insurance provided for in this Agreement:

- (i) Shall be in the form and substance approved by the Florida Department of Financial Services, Office of Insurance Regulation (OIR),
- (ii) Shall be issued only by companies licensed by OIR,
- (iii) Certificates of Insurance pertaining to same shall be delivered to the City, at least fourteen (14) days prior to the Commencement Date of the Term unless otherwise provided herein,

City does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect Lessee’s interests or liabilities but are merely minimum requirements established by the City’s Risk Management Division. City reserves the right to require any other reasonable insurance coverages that the City deems necessary depending upon the risk of loss and exposure to liability.

(g) Collection of Insurance. In the event of destruction of or damage to any of the Premises (other than the Public Assets, which are not being insured by Lessee) or the buildings, other structures and improvements covered by insurance, subject to the rights of any applicable Leasehold or Subleasehold Mortgagee, the funds payable under the insurance policies required to be maintained by Lessee shall be made payable to Lessee, to be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or improvements on the Premises (other than the Public Assets) so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable codes. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of the reconstruction or repair. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived

from such insurance policies, the surplus shall remain the sole property of Lessee.

(h) Precautions. In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, the Lessee agrees that it will at its expense take all reasonable precautions to protect the Premises from damage or destruction.

(i) Primary coverage. All insurance referred to in this Lease shall apply as primary coverage and shall not be affected by any insurance which Lessor may carry in its own name.

ARTICLE 18. ASSIGNMENT AND SUBLEASING

18.01 Assignment. Except as provided in Article 23 of this Lease, the Lessee shall not assign, transfer, sell or convey (all of the foregoing, an "**Assignment**") any or all of its interest in this Lease to any other natural or corporate person, or any entity whatsoever, without the express written consent of the Lessor (which consent shall not be unreasonably withheld, conditioned or delayed), authorized by appropriate municipal action taken at a regular public meeting of the City Commission of the City of Fort Lauderdale. Such Assignment shall not be valid until Lessor has consented to such Assignment and there shall have been delivered to Lessor a true copy of the instrument effecting such Assignment, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease on Lessee's part to be performed. After the aforesaid instrument has been delivered to Lessor and Lessor has consented to such Assignment, then from and after the date of assumption, the assigning party shall be released of all further obligations arising after the date of the assignment under this Lease from and after the date of such assumption.

The factors upon which Lessor may base its decision on whether to grant consent under this Section 18.01 (to the extent consent is required) will be limited to whether: (i) the proposed assignee meets standards of creditworthiness and financial resources and responsibility as originally expected of the prior Lessee, (ii) the proposed assignee has the ability to perform the obligations then existing under this Lease, and (iii) the proposed assignee has prior related business experience for operating property with uses similar to those contemplated in this Lease or as existing at the time of proposed Assignment.

Notwithstanding anything to the contrary contained in this Lease Lessee may, without Lessor's consent, (but upon notice to Lessor subsequent to Assignment) at any time (A) assign this Lease together with an assignment of all of Lessee's (or any Affiliate(s) of Lessee) substantially similar facilities in Florida, (B) assign this Lease to any entity directly or indirectly (through one or more intermediaries) controlled by, controlling or under common control with Lessee or to any entity directly or indirectly resulting from the consolidation or merger of Lessee into or with another entity or to any entity acquiring substantially all of the assets or stock of Lessee, provided (x) such assignment shall be fully subject to all terms, covenants and conditions of this Lease; and (y) the assignee shall assume in a written instrument all obligations under this Lease; as used herein, "control" shall mean ownership of at least fifty one percent (51%) of the voting interest together with the right and power to direct or cause the direction of the management and policies of a particular entity; (C) assign this Lease to a waterpark chain operating at least five (5) waterparks in the United States prior to the Assignment, (D) assign this Lease, in whole or part, to any other "owner" or "operator" under a management contract and/or operating agreement under which such owner or

operator operates the business for the Lessee at the Premises, or (E) any Leasehold Mortgagee as otherwise set forth herein. A public offering of Lessee's shares or a recapitalization of, reorganization of or sale of a controlling interest in Lessee, whether direct or indirect, shall not require Lessor's consent or approval. No such sale, transfer or assignment shall be deemed valid or binding on Lessor until there shall have been delivered to Lessor a true copy of the instrument effecting such sale, transfer or assignment, together with the address of each assignee therein named, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease. Any such assignment, transfer, conveyance or pledge by the Lessee shall be subject to all of the terms and provisions of this Lease. Lessee shall continue to be liable for all obligations and actions arising out of this Lease prior to the date of the assignment.

18.02 Sublease. Provided Lessee is not otherwise in default under this Lease at time of sublease, Lessee may sublet portions or the whole of the Premises and the Improvements or grant licenses or concessions there at without the consent of Lessor. Any (i) sublease, sub-license or sub-concession is referred to in this Lease as a "**Sublease,**" and (ii) Sublessee leasing pursuant to a Sublease is referred to in this Lease as a "**Sublessee.**" Each such Sublease shall contain self-operative provisions that it is subject and subordinate to this Lease, subject to the terms of any non-disturbance agreement between Lessor and any such Sublessee. No Sublease shall relieve Lessee from liability under this Lease.

Provided the Sublessee is not otherwise in default under the applicable Sublease at such time, a Sublessee may sell, convey or assign its interest in the Sublease and the Improvements related thereto (as applicable), provided that no such sale, transfer or assignment shall be deemed valid or binding on Lessor until there shall have been delivered to Lessor a true copy of the instrument effecting such sale, transfer or assignment, together with the address of each assignee therein named, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of (as applicable) the (a) Sublease on the Sublessee's part to be performed. The assignor shall, upon compliance with the foregoing, be released and discharged from all obligations arising out of this Lease or under the Sublease following the date of the assignment. This paragraph shall apply to each subsequent sale, transfer or assignment of the Sublessee's interest. No assignment of a Sublease shall relieve Lessee from liability under this Lease.

18.03 Recognition of Sublease. At Lessee's or Sublessee's request, Lessor from time to time, will execute and deliver a separate Non-Disturbance Agreement with each Sublessee named in such request, whose Sublease is for a portion of the Public Assets, which Non-Disturbance Agreement will provide that Lessor will not terminate such Sublease or the leasehold estate created thereunder, nor disturb such Sublessee's possession and quiet enjoyment of the Subleased Premises upon any termination of this Lease, and upon any such termination of this Lease, shall thereafter recognize the Sublease as a direct lease between Lessor and Sublessee as to the Sublease unless such Sublessee shall then be in default under its Sublease and the time to cure such default available to Sublessee or any mortgagee of Sublessee shall have expired; provided that in such agreement the Sublessee shall agree to attorn to Lessor in case of any termination of this Lease, and, if applicable, the termination of the Sublease.

In connection with any assignment or sublease under a management contract, Lessor hereby consents to the retention by Lessee of, or the grant to Lessee of, a security interest/collateral assignment in the Lessee's improvements, fixtures and equipment now or hereafter on the Premises. Lessor further consents to the recording of evidence

of such security interest, collateral assignment or mortgage including, without limitation, UCC financing statements and/or a Leasehold Mortgage.

18.04 Notwithstanding anything contained herein to the contrary, any Leasehold Mortgagee that acquires the interest of Lessee under this Lease by foreclosure, deed in lieu thereof, or otherwise, may assign this Lease (or its rights hereunder) or sublease the Premises, without Lessor's consent, to any person or entity of any kind other than a non-profit organization which is exempt from the payment of property taxes; provided further that upon any assignment of this Lease in accordance with these provisions, the Leasehold Mortgagee shall thereupon be relieved of any further liability which may accrue under this Lease or the aforesaid new lease from and after the date of such assignment provided that the assignee shall execute and deliver to Lessor a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease, it being the intention of the parties that once the Leasehold Mortgagee shall succeed to Lessee's interest under this Lease, any and all subsequent assignments (whether by such Leasehold Mortgagee, any purchaser at foreclosure sale or other transferee or assignee) shall effect a release of the Leasehold Mortgagee's liability (if any) under this Lease.

ARTICLE 19. SUCCESSORS IN INTEREST

19.01 The covenants and agreements contained in this Lease shall be binding on and inure to the benefit of the respective successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

ARTICLE 20. NOTICES

20.01 All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

(a) By certified mail, return receipt requested or overnight courier to the following addresses:

LESSOR: City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

With a copy to: City of Fort Lauderdale
Attn: City Attorney
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

With a copy to: City of Fort Lauderdale
Attn: Airport Manager
6000 NW 21st Avenue
Fort Lauderdale, FL 33309

LESSEE: FtL WaterResort, LLC
C/O Schlitterbahn Waterparks and Resorts
381 East Austin Street
New Braunfels, Texas 78130
Attn: Michael L. Agnese, Esq.

With a copy to: Frank, Weinberg & Black, P.L.
Steven W. Deutsch Esq.
7805 SW 6th Court
Plantation, FL 33324

or to such other addresses as the parties may by writing designate to the other party.

(b) The notice may also be served by personal delivery to Lessor or Lessee, or to the agent of Lessee in charge of the leased Premises.

(c) Notices will be deemed effective the day received by personal delivery or overnight courier, and three (3) days after sending it, if sent by certified mail.

(d) The notice to any leasehold mortgagee, as provided in Article 23, below, will only be provided if such mortgagee has complied with the provisions of Article 23 below.

ARTICLE 21. INTEREST

21.01 All delinquent payments to each party shall bear interest at the rate of ten percent (10%) unless otherwise allowed by Florida law. Such interest shall be calculated from the due date, without regard to any grace period, to the date of payment, on a daily basis, and will be due and payable when billed.

ARTICLE 22. SEVERABILITY

22.01 If any section, subsection, sentence, clause, provision, or part of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall not be affected.

ARTICLE 23. RIGHTS OF LESSEE TO MORTGAGE LESSEE'S INTEREST UNDER THIS LEASE AND RIGHTS OF LEASEHOLD MORTGAGEE

23.01 The Lessee shall have the right to mortgage Lessee's interest under this Lease to a Federal or State Savings & Loan Association, Bank or Trust Company, Insurance Company, Pension Fund or Trust or similar lending institution authorized to make leasehold mortgage loans in the State of Florida (a "**Leasehold Mortgagee**") without obtaining the prior consent of the Lessor, subject, however, to the other terms and conditions of this Lease, to the extent applicable. The pledge of Lessee's leasehold interest as collateral to any other funding source shall be subject to approval by Lessor as provided in Article 18 above, but thereupon such other funding source shall have all the rights and obligations of a Leasehold Mortgagee under this Article.

23.02 If the Lessee shall mortgage its leasehold interest (a "**Leasehold Mortgagee**") and if the holder of the mortgage or pledge shall forward to the Lessor a duplicate original of the mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Office of Official Records of Broward County, Florida, together with a written notice setting forth the name and address of the Leasehold Mortgagee, then, until the time that the Leasehold Mortgage shall be satisfied of record, the following provisions of this Article 23 shall apply.

23.03 When giving notice to the Lessee with respect to any default under the provisions of this Lease, the Lessor will also serve a copy of such notice upon the Leasehold Mortgagee. No such notice to the Lessee shall be deemed to have been given unless a copy of such notice has been mailed to such Leasehold Mortgagee, which notice must specify the nature of each such default.

23.04 In case the Lessee shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which the Lessee is required to do or perform and the Lessor shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by the Lessee. The Leasehold Mortgagee, upon the date of mailing by Lessor of the notice referred to in Section 23.03 above, shall have, in addition to any period of grace extended to the Lessee under the terms and conditions of this Lease for failure to pay Rent or any other sum due from Lessee under this Lease, a period of thirty (30) days from the date the notice of default was mailed to the Leasehold Mortgagee within which to cure such default. In case of a default by Lessee other than the failure to pay Rent or any other sum due from Lessee under this Lease, Lessor shall take no action to effect a termination of this Lease without first giving to such Leasehold Mortgagee prior written notice and a reasonable time within which either: (i) to obtain possession of the Premises and the Improvements (including possession by a receiver) and to cure such default in the case of a default which is within the power of such Leasehold Mortgagee to cure when such Leasehold Mortgagee has either obtained possession of the Premises and the Improvements or has the right and ability to cure same (acting reasonably); or (ii) to institute and complete proceedings or otherwise acquire Lessee's leasehold estate under this Lease in the case of a default which is not within the power of such Leasehold Mortgagee to cure upon obtaining possession.

23.05 If within the thirty (30) day period referred to in Section 23.04, the Leasehold Mortgagee shall (i) notify Lessor of its election to proceed with due diligence to acquire possession of the Premises and the Improvements, or to foreclose the Leasehold Mortgage or otherwise extinguish Lessee's interest in this Lease; and (ii) deliver to Lessor an instrument duly executed and acknowledged wherein the holder of the Leasehold Mortgage agrees that (a) during the period that such holder shall be in possession of the Premises and the Improvements and/or during the pendency of any such foreclosure or other proceedings, and until the interest of Lessee under this Lease shall terminate, as the case may be, it will pay or cause to be paid to Lessor all sums then due (including past due) and from time to time becoming due under this Lease; and (b) if delivery of possession of the Premises and the Improvements shall be made to such holder (or to its nominee), whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all the covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreement which are not within the power of such holder or such nominee to perform. Upon such extinguishment of Lessee's interest in this Lease and such performance by such holder or such nominee, or by any purchaser of this Lease pursuant to any foreclosure proceeding, Lessor's right to serve a notice of election to end the term of this Lease based upon any default which is not within the power of such holder or such nominee or such purchaser to perform shall be deemed to be and shall be waived as to such Leasehold Mortgagee (and its successors and assigns) but Lessor reserves its rights against the original Lessee. If prior to any sale pursuant to any proceeding brought to foreclose such Leasehold

Mortgage, or if prior to the date on which Lessee's interest in this Lease shall otherwise be extinguished the default in respect of which Lessor shall have given notice shall have been remedied and possession of the Premises and the Improvements restored to Lessee, the obligation of the holder of the Leasehold Mortgage shall thereafter become null and void and of no further force and effect. Nothing herein contained shall affect the right of Lessor, upon the subsequent occurrence of any default by Lessee, to exercise any right or remedy herein reserved to Lessor, subject to the rights of the Leasehold Mortgage under this Article.

23.06 In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this Article 23 prior to its stated expiration date, the Lessor will enter into a new lease of the Premises with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, to an entity formed by or on behalf of such Leasehold Mortgagee or by or on behalf of the holder of the note secured by the Leasehold Mortgage held by such Leasehold Mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in this Lease, provided that such Leasehold Mortgagee makes written request and executes, acknowledges and delivers to the Lessor such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to the Lessor of all amounts then due to the Lessor, including reasonable counsel fees, court costs and disbursements incurred by the Lessor in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by the Lessor subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new lease. Any new lease referred to in this Article 23 shall not require any execution, acknowledgment or delivery by the Lessor in order to become effective as against the Lessor and the Lessor shall be deemed to have executed, acknowledged and delivered any such new lease immediately upon receipt by the Lessor of such new lease accompanied by payment to the Lessor of all amounts then due to the Lessor of which the Leasehold Mortgagee shall theretofore have received written notice. Upon the request of any Leasehold Mortgagee, the Lessor shall execute such documentation as such Leasehold Mortgagee may reasonably request effectuating the foregoing. In addition, immediately upon receipt by the Lessor of such new lease, as provided in this Article 23, the Lessor shall be deemed to have executed, acknowledged and delivered to the Leasehold Mortgagee an assignment of all subleases covering the Premises which theretofore may have been assigned and transferred to the Lessor and all subleases under which subtenants shall be required to attorn to the Lessor pursuant to the terms and conditions of such subleases or this Lease. Such assignment by the Lessor shall be deemed to be without recourse as against the Lessor. Within ten (10) days after a written request therefore by the Leasehold Mortgagee, such assignment or assignments shall be reduced to writing in recordable form and executed, acknowledged and delivered by the Lessor to the Leasehold Mortgagee.

23.07 The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment of this Lease in lieu of foreclosure, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease as provided below, except that such Leasehold Mortgagee may assign this Lease without the Lessor's consent to any institutional assignee (as identified above) at any time whether prior or subsequent to the construction or completion of buildings, or other structures and improvements erected or to be erected upon the Premises.

23.08 In the event that a Leasehold Mortgagee shall become the owner or holder of the Lessee's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Lessee," as used in this Lease, means only the owner or holder of the Lessee's interest for the time being so that, in the event of a sale, assignment (as permitted above) or other disposition of the Lessee's interest in this Lease by the Leasehold Mortgagee, the Leasehold Mortgagee shall be entirely freed and relieved of all covenants and obligations of the Lessee under this Lease and it shall be deemed and construed, without further agreement between the Lessor and the Leasehold Mortgagee or between the Lessor, the Leasehold Mortgagee and the Leasehold Mortgagee's purchaser or assignee at any such sale or upon assignment of Lessee's interest, that the purchaser or assignee of Lessee's interest has assumed and agreed to carry out any and all covenants and obligations of Lessee.

23.09 Within ten (10) days after written request by Lessee or by Lessee's Leasehold Mortgagee Lessor shall execute and deliver to Lessee and such Leasehold Mortgagee (i) a Consent to Mortgage in the form substantially as attached hereto and made a part hereof as **Exhibit F**, or (ii) in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Lease by Lessee or Lessee's Leasehold Mortgagee, an offset statement shall be required from the Lessor, the Lessor agrees to deliver in recordable form a certificate to any actual or proposed Leasehold Mortgagee, purchaser, assignee or to Lessee, certifying (if such be the case) (i) the amount of rental and additional rental due under the Lease, if any, and the date to which rentals have been paid; (ii) that this Lease is in full force and effect; (iii) that the Lessor has no knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by the Lessor against the Lessee in respect of obligations pursuant to this Lease.

23.10 So long as the Lessee's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee, that they shall not surrender or accept a surrender of this Lease or any part of it, nor shall they cancel, abridge or otherwise modify this Lease or accept prepayments of installments of rent to become due without the prior written consent of such Leasehold Mortgagee in each instance.

23.11 Reference in this Lease to acquisition of the Lessee's interests in this Lease by a Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of the Lessee's interest in this Lease by any purchaser at a sale on foreclosure of a Leasehold Mortgage and provisions applicable to a Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

23.12 So long as the Lessee's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee that the Lessor shall not sell, grant or convey to the Lessee all or any portion of the Lessor's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee. In the event of any such sale, grant or conveyance by the Lessor to the Lessee, the Lessor and the Lessee agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This section shall not be construed to prevent a sale, grant or conveyance of the Lessor's fee simple title by the Lessor to any person, firm or corporation other than the Lessee, its successors, legal representatives and assigns.

23.13 Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions above) of a Leasehold Mortgagee; provided that such assignee shall forward to the Lessor a duplicate original of the assignment of the Leasehold Mortgage in form proper for record or a copy of such assignment, certified as a true copy by the Office of Official Records of Broward County, together with a written notice setting forth the name and address of the assignee.

23.14 Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of the Lessor in the Premises, or any portion of them, be subordinated.

23.15 Subleasehold Mortgage on all or any portion of the Public Assets. Any Sublessee of any portion of the Public Assets shall have the right to mortgage, assign, pledge or hypothecate ("**Subleasehold Mortgage**") any Sublease as security for construction and/or permanent financing from the type lender described in Section 23.01 of this Lease (a "**Subleasehold Mortgage**") for improvements ("**Subleasehold Improvements**") made by such Sublessee. If the Sublessee shall have executed and delivered a Subleasehold Mortgage, and the Subleasehold Mortgagee shall have notified Lessor to such effect giving its contact information:

23.15.1 Lessor shall give notice to such Subleasehold Mortgagee of each notice of default given to Sublessee under any Sublease, together with a copy thereof. If this Lease is terminated and a Sublease recognized by Lessor, such Subleasehold Mortgagee shall thereafter have the right, for a period of thirty (30) days more than is given to the Sublessee, to remedy or cause to be remedied any default which is the basis of a notice to the Sublessee and Lessor shall accept performance by such Subleasehold Mortgagee as performance by Sublessee. Such Subleasehold Mortgagee shall be subrogated to any and all rights of the Sublessee with respect to curing of any default thereunder by the Sublessee. If this Lease is terminated for any reason, and a Sublease is recognized by Lessor, in case of default by the Sublessee under any such Sublease, other than a default in the payment of money, Lessor shall take no action to effect a termination of any Sublease without first giving such Subleasehold Mortgagee prior written notice and a reasonable time within which either: (i) to obtain possession of the Subleased Premises and the Improvements (including possession by a receiver) and to cure such default in the case of a default which is within the power of such Subleasehold Mortgagee to cure when such Subleasehold Mortgagee has either obtained possession of the Subleased Premises and the Improvements or has the right and ability to cure same (acting reasonably); or (ii) to institute and complete proceedings or otherwise acquire Sublessee's leasehold estate under any Sublease in the case of a default which is not within the power of such Subleasehold Mortgagee to cure upon obtaining possession.

23.15.2 If within the thirty (30) day period referred to in Section 23.15.1, the Subleasehold Mortgagee shall (i) notify Lessor of its election to proceed with due diligence to acquire possession of the Subleased Premises and the Improvements, or to foreclose the Subleasehold Mortgage or otherwise extinguish Sublessee's interest in this Lease; and (ii) deliver to Lessor an instrument duly executed and acknowledged wherein the holder of the Subleasehold Mortgage agrees that (a) during the period that such holder shall be in possession of the Subleased Premises and the Improvements and/or during the pendency of any such foreclosure or other proceedings, and until the interest of Sublessee shall terminate, as the case may be, it will pay or cause to be paid to Lessor all sums then due (including past due) and from time to time becoming due under the Sublease; and (b) if delivery of possession of the Subleased Premises and

the Improvements shall be made to such holder (or to its nominee), whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all the covenants and agreements herein contained on Sublessee's part to be performed to the extent that Sublessee shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreement which are not within the power of such holder or such nominee to perform. Upon such extinguishment of Sublessee's interest and such performance by such holder or such nominee, or by any purchaser of the Sublease pursuant to any foreclosure proceeding, Lessor's right to serve a notice of election to end the term of the Sublease based upon any default which is not within the power of such holder or such nominee or such purchaser to perform shall be deemed to be and shall be waived as to such Subleasehold Mortgagee (and its successors and assigns) but Lessor reserves its rights against the original Sublessee. If prior to any sale pursuant to any proceeding brought to foreclose such Subleasehold Mortgage, or if prior to the date on which Sublessee's interest shall otherwise be extinguished the default in respect of which Lessor shall have given notice shall have been remedied and possession of the Subleased Premises and the Improvements restored to Sublessee, the obligation of the holder of the Subleasehold Mortgage shall thereafter become null and void and of no further force and effect. Nothing herein contained shall affect the right of Lessor, upon the subsequent occurrence of any default by Sublessee, to exercise any right or remedy herein reserved to Lessor, subject to the rights of the Subleasehold Mortgagee under this Article.

23.15.3 In the event of the termination of the Sublease or of any succeeding sublease made pursuant to the provisions of this Article 23 prior to its stated expiration date, the Lessor will enter into a new lease of the Subleased Premises with the Subleasehold Mortgagee or, at the request of such Subleasehold Mortgagee, to an entity formed by or on behalf of such Subleasehold Mortgagee or by or on behalf of the holder of the note secured by the Subleasehold Mortgage held by such Subleasehold Mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in the Sublease, provided that such Subleasehold Mortgagee makes written request and executes, acknowledges and delivers to the Lessor such new sublease within forty-five (45) days from the date of such termination and such written request and such new sublease is accompanied by payment to the Lessor of all amounts then due to the Lessor, including reasonable counsel fees, court costs and disbursements incurred by the Lessor in connection with any such default and termination as well as in connection with the execution and delivery of such new sublease, less the net income collected by the Lessor subsequent to the date of termination of the Sublease and prior to the execution and delivery of the new sublease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new sublease. Any new sublease referred to in this Article 23 shall not require any execution, acknowledgment or delivery by the Lessor in order to become effective as against the Lessor and the Lessor shall be deemed to have executed, acknowledged and delivered any such new sublease immediately upon receipt by the Lessor of such new sublease accompanied by payment to the Lessor of all amounts then due to the Lessor of which the Subleasehold Mortgagee shall theretofore have received written notice. Upon the request of any Subleasehold Mortgagee, the Lessor shall execute such documentation as such Subleasehold Mortgagee may reasonably request effectuating the foregoing. In addition, immediately upon receipt by the Lessor of such new sublease, as provided in this Article 23, the Lessor shall be deemed to have executed, acknowledged and delivered to the Subleasehold Mortgagee an assignment of all sub-subleases covering

the Subleased Premises which theretofore may have been assigned and transferred to the Lessor and all sub-subleases under which sub-subtenants shall be required to attorn to the Lessor pursuant to the terms and conditions of such sub-subleases or the Sublease. Such assignment by the Lessor shall be deemed to be without recourse as against the Lessor. Within ten (10) days after a written request therefore by the Subleasehold Mortgagee, such assignment or assignments shall be reduced to writing in recordable form and executed, acknowledged and delivered by the Lessor to the Subleasehold Mortgagee. .

23.15.4 The Subleasehold Mortgagee may become the legal owner and holder of the Sublease by foreclosure of its mortgage or as a result of the assignment of the Sublease in lieu of foreclosure, whereupon such Subleasehold Mortgagee shall immediately become and remain liable under the Sublease as provided below, except that such Subleasehold Mortgagee may assign the Sublease without the Lessor's consent to any institutional assignee (as identified in Section 23.01 above) at any time whether prior or subsequent to the construction or completion of buildings, or other structures and improvements erected or to be erected upon the Subleased Premises.

23.15.5 In the event that a Subleasehold Mortgagee shall become the owner or holder of the Sublessee's interest by foreclosure of its mortgage or by assignment of the Sublease in lieu of foreclosure or otherwise, the term "**Sublessee**," as used in this Lease, means only the owner or holder of the Sublessee's interest for the time being so that, in the event of a sale, assignment (as permitted above) or other disposition of the Sublessee's interest in the Sublease by the Subleasehold Mortgagee, the Subleasehold Mortgagee shall be entirely freed and relieved of all covenants and obligations of the Subessee under the Sublease and it shall be deemed and construed, without further agreement between the Lessor and the Subleasehold Mortgagee or between the Lessor, the Subleasehold Mortgagee and the Subleasehold Mortgagee's purchaser or assignee at any such sale or upon assignment of Sublessee's interest, that the purchaser or assignee of Sublessee's interest has assumed and agreed to carry out any and all covenants and obligations of Sublessee.

23.15.6 Within ten (10) days after written request by Sublessee of any portion of the Public Assets or by Sublessee's Subleasehold Mortgagee, or in the event that upon any sale, assignment or mortgaging of Sublessee's interest in the Sublease by Sublessee or Sublessee's Subleasehold Mortgagee, an offset statement shall be required from the Lessor, the Lessor agrees to deliver in recordable form a certificate to any actual or proposed Subleasehold Mortgagee, purchaser, assignee or to Sublessee, certifying (if such be the case) (i) the amount of rental and additional rental due under the Sublease, if any, and the date to which rentals have been paid; (ii) that the Sublease is in full force and effect; (iii) that the Lessor has no knowledge of any default under the Sublease, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by the Lessor against the Sublessee in respect of obligations pursuant to the Sublease.

23.15.7 So long as the Sublessee's interest in the Sublease shall be mortgaged to a Subleasehold Mortgagee, the parties agree for the benefit of such Subleasehold Mortgagee, that they shall not surrender or accept a surrender of the Sublease or any part of it, nor shall they cancel, abridge or otherwise modify the Sublease or accept prepayments of installments of rent to become due without the prior written consent of such Subleasehold Mortgagee in each instance.

23.15.8 Reference in this Lease to acquisition of the Sublessee's interests in any Sublease by a Subleasehold Mortgagee shall be deemed to refer, where circumstances

require, to acquisition of the Sublessee's interest in any Sublease by any purchaser at a sale on foreclosure of a Subleasehold Mortgage and provisions applicable to a Subleasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

23.15.9 So long as the Sublessee's interest in any Sublease shall be mortgaged to a Subleasehold Mortgagee, the parties agree for the benefit of such Subleasehold Mortgagee that the Lessor shall not sell, grant or convey to the Lessee or Sublessee all or any portion of the Lessor's fee simple title to the Premises without the prior written consent of such Subleasehold Mortgagee.

23.15.10 Reference in this Lease to a Subleasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions above) of a Subleasehold Mortgagee; provided that such assignee shall forward to the Lessor a duplicate original of the assignment of the Subleasehold Mortgage in form proper for record or a copy of such assignment, certified as a true copy by the Office of Official Records of Broward County, together with a written notice setting forth the name and address of the assignee.

ARTICLE 24. PUBLIC RECORDS

24.01 To the extent Section 119.0701, Florida Statutes, as may be amended is applicable, Lessee shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (2) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, as may be amended or revised, 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.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the Lessee upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

ARTICLE 25. NON-DISCRIMINATION

25.01 The Lessee does hereby covenant and agree that (1) no person on the grounds of race, color, age, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, age, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise selected to discrimination, (3) that the Lessee shall use the Premises in

compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter as if said Lease had never been made or issued. This provision solely with regard to (3) above, shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

ARTICLE 26. STANDARD PROTECTION CLAUSES

26.01 It shall be a condition of this Lease, that the Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

ARTICLE 27. NONWAIVER

27.01 Failure of either party to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements. The Lessee covenants that no surrender or abandonment of the Premises or of the remainder of the term shall be valid unless accepted by the Lessor in writing.

ARTICLE 28. ATTORNEYS FEES- LIMITATION OF LIABILITY

28.01 In the event of a breach of any of the provisions of this Lease, the party not in breach shall be entitled to recover from the breaching party all costs, expenses, reasonable attorneys' fees and damages which may be incurred or sustained by reason of such breach.

28.02 Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes. Notwithstanding the foregoing, it is the intent of the parties that the Public Assets, to the fullest extent permitted by law, will be treated as public facilities and, subject to the limitations of sovereign immunity which Lessor is entitled to in accordance with applicable law. The foregoing statement or anything else in this Agreement, however, does not in any way extend any liability to the City for any actions arising out of the Lessee's lease of or operation of the Public Assets. Although Lessee

will maintain the Public Assets, to the fullest extent possible, such Public Assets shall be deemed operated in accordance with this Agreement for the public benefit and to the extent permitted by law, the Lessor will be protected by the doctrine of sovereign immunity with respect to the operation of the Public Assets. To the extent permitted by law, all persons coming upon the Public Assets are hereby notified that their use of the Public Assets are in AS-IS and WHERE IS condition, and that all such parties assume all risk in connection with their use of the Public Assets. The provisions of this paragraph shall not obviate the Lessee's obligations to Lessor under this Lease with respect to the Public Assets, provided members of the public shall not be considered to be third-party beneficiaries of such obligations. Notwithstanding the foregoing, nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

28.03 No limited partner, member, shareholder, director, officer, administrator, agent or employee of Lessor or Lessee shall be charged personally or held contractually liable under any term or provisions of this Lease or of any amendment to this Lease, or because of the breach thereof, or because of its or their execution or attempted execution.

ARTICLE 29. RESTRAINTS UPON LESSEE

29.01 Lessee understands and agrees that it is expressly subject to all applicable zoning restrictions, provided, however, the foregoing shall not serve to obviate Lessor's obligations or at Lessee's election, its option, to pursue the Rezoning. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority, and the Premises shall not be used for any improper or immoral purposes or in any manner which constitutes a nuisance, either public or private.

ARTICLE 30. SPECIFIC COMPLIANCE WITH ENVIRONMENTAL LAWS

30.01 The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority, specifically including without limitation those addressing the following for protection of the environment:

- (1) Proper use, storage, treatment and disposal of Materials, including contracting with a licensed hazardous waste transporter or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials.
- (2) Proper, use, disposal and treatment of stormwater runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Premises, if applicable.
- (3) Adequate inspection, licensing, insurance and registration of existing and future storage tanks, storage systems and ancillary facilities to meet all City, local, state and federal standards, including the

installation and operation of adequate monitoring devices and leak detection systems.

(4) Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated materials and the proper disposal thereof.

(5) Compliance with reporting requirements of Title III of the Superfund Amendment, Chapter 27 of the Broward County Code of Ordinances, Chapters 13 and 28 of the Fort Lauderdale Code of Ordinances and any other environmental regulations, as applicable and as such laws may be enacted and amended from time to time.

30.02 The release of any Materials on the Premises that is in an amount constituting a violation of any federal, state, City or local law, rule or regulation or in violation of any order or directive of any federal, state, or local court or governmental authority, by Lessee, or any of its sublessees or the officers, employees, subcontractors or agents of Lessee or its sublessees, shall be, at the Lessee's expense, and upon demand of City or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Lessee does not take action immediately to have such Materials contained, removed and abated, the City or any of its agencies may upon reasonable notice to Lessee (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by the City or any of its agencies shall not relieve the Lessee of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either the Lessee or the City to contain or remove Materials, or to abate a discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its discharge.

30.03 Lessee shall provide the City with notice of releases of Materials occurring at the Premises. Lessee shall maintain a log of all such notices to the City, and shall also maintain all records required by federal, state, City and local laws, rules and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with applicable laws, rules and regulations.

30.04 As required by law, Lessee shall provide the federal, state, City and local regulatory agencies with notice of spills, releases, leaks or discharges of Materials on the Premises in an amount required to be reported to any local, City, state or federal regulatory agency under applicable environmental laws, rules and regulations. Lessee shall further provide the City with written notice of not less than one (1) business day following commencement of the same, of the curative measures, remediation efforts and monitoring activities to be effected on the Premises. Lessee shall have a current contingency plan in effect relating to such releases which provide minimum standards and procedures for storage of regulated materials and other Materials, prevention and containment of spills and releases, and transfer and disposal of regulated materials and

other Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of releases or other accidents involving hazardous materials, bio-hazardous materials, petroleum products or other Materials.

30.05 The City, upon reasonable written notice to Lessee, shall have the right to inspect all documents relating to the environmental condition of the Premises, including without limitation, the release of Materials at the Premises, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under applicable environmental laws, rules, regulations or any development order issued to the City and pertaining to the Premises pursuant to Chapter 380, Florida Statutes, including but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results.

30.06 Lessee agrees to permit inspection of the Premises by appropriate federal, state, county, City, and local agency personnel in accordance with applicable environmental laws, rules and regulations and as required by any development order issued to the City pertaining to the Airport, pursuant to Chapter 380, Florida Statutes.

30.07 If the City arranges for the removal of any Materials on the Premises that were caused by Lessee, or any of its sublessees or the officers, employees, contractors, subcontractors or agents of Lessee or its sublessees, the costs of such removal incurred by the City shall be paid by Lessee to the City within thirty (30) calendar days of City's written demand.

30.08 Nothing herein shall relieve Lessee of its general duty to cooperate with the City in ascertaining the source and containing, removing, and abating any Materials at the Premises. The City and its employees, contractors, and agents, at times in accordance with applicable laws, rules and regulations, shall have the right to enter the Premises for the purposes of the foregoing activities or conducting such environmental assessments (testing and sampling), inspections, audits as warranted.

30.09 Lessee hereby agrees that at any time during the last year of the Term of this Lease, the City shall have the right to require Lessee to conduct a termination of Lease assessment of the Premises, at City's expense. If documentation warrants, the City shall have the right to require the Lessee to conduct a further assessment of the Premises at the City's expense, which may include, but shall not be limited to, soil and water samples.

30.10 Should any termination of Lease assessment of the Premises indicate that further actions must be conducted in order to comply with applicable laws, ordinances, rules or regulations, or any directive of any federal, state or local court or governmental authority, then the City shall have the right to have such further actions conducted at the City's expense. Nothing herein shall be construed to limit City's right of entry onto the Premises pursuant to other provisions of this Article or of this Agreement, or pursuant to its regulatory powers. Lessee shall have the right to use and rely on any soil or water samples obtained by City.

30.11 Lessor represents and warrants that it has not received written notice of the existence of any Material in or about the Premises. In addition, Lessor hereby covenants and agrees that in the event any Materials are currently, or in the future located in, on or about the Premises, and such Materials were not introduced to the Premises by Lessee or any Sublessee, or any contractor, agent or employee of such parties, Lessor shall promptly remove and/or remediate such Materials to the full extent required by applicable law. In the event City shall arrange for the removal of Materials on the Premises that are not the responsibility of the Lessee to correct, and if any such clean-up activities by City shall prevent Lessee from using the Premises for the purposes intended, the rent shall be abated from the date that the use of the Premises for its intended purposes is precluded and until the Premises again become available for the Lessee's use. The abatement of such rental shall be made on an equitable basis giving effect to the amount and character of the space of which the Lessee is being deprived as compared with the entire Premises. City shall use reasonable efforts to not disrupt Lessee's business; however, in no event shall Lessee be entitled to any amount on account of lost profits, lost rentals, or other claims of damage, resulting of City's clean-up activities.

30.12 The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

30.13 Lessee shall provide City, if requested by the Airport Manager, with a list of all hazardous, bio-hazardous, or other Materials stored, used, generated or disposed of on the Premises during Lessee's occupation of the Premises under this Lease.

30.14 Lessee shall ensure that any rare, protected, threatened, and/or endangered species as listed by the Federal, State, or local regulatory agencies are protected from harm or removed by obtaining all applicable permits through the proper agencies and shall follow all proper procedures for their removal.

ARTICLE 31. CONSTRUCTION CONTRACTS BONDS, INSURANCE,
INDEMNIFICATION

31.01 Lessee agrees that prior to commencing any work or construction for the Project on the Premises, the Lessee shall require the Contractor building the Improvements to maintain at all times until final payment for such work or construction a valid construction bond and a valid labor and material bond, which shall be in an amount not less than the amount covering the full amount of the work performed. If such construction or work is for the Public Assets, each bond must also guarantee to the City the completion of the work being performed by the contractor as well as full payment of all suppliers, materialmen, laborers or subcontractors employed in completing the improvement. Copies of all bonds must be submitted to the City.

31.02 Lessee agrees to include the following provisions in any contracts it enters into with contractors in connection with the construction and completion of any Improvements to the Premises:

(1) In consideration of the sum of ten (\$10.00) Dollars and other good and valuable consideration, the Contractor shall indemnify and hold the City of Fort Lauderdale, its agents, officers and employees harmless from or on account of any injuries or damages, received or sustained by any person or persons arising out of or in any way connected with the operations or work performed on the subject property by Contractor, including during any warranty period, by use of any improper materials, by any intentional act, by any misconduct or recklessness, or by or on account of any other act or omission of said Contractor or its subcontractors, agents, servants or employees.

(2) Contractor agrees to indemnify and hold the City of Fort Lauderdale harmless, including during any warranty period, against any claims or liability arising out of or in any way connected with the violation of any state, federal, City or local laws, ordinances, statutes, rules or regulations by Contractor, its subcontractors, agents, servants or employees.

(3) Contractor further agrees to indemnify and hold the City of Fort Lauderdale, its agents, officers and employees harmless, for or on account of any injuries or damages, received or sustained by any person or persons arising out of or in any way connected with patent construction defects.

(4) These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against the City by reason of any such claim or demand, Contractor, upon written notice from City shall resist and defend such action or proceeding by legal counsel satisfactory to City.

Lessee agrees to indemnify and hold Lessor harmless from any claim of lien by any contractor, sub-contractor, materialman or any other person, firm or corporation whatsoever, and Lessee further agrees to hold the Lessor harmless and to indemnify the Lessor for all costs, including costs of defenses, attorneys' fees and other expenses, in connection with any claim of whatsoever kind, whenever the same may be presented, arising out of the construction of any improvements or the making of any alterations whatsoever incidental to this Lease Agreement.

This indemnification provision shall survive the termination of this Lease Agreement and shall not be limited by any insurance requirements set forth herein.

31.03 Lessee agrees to include the following insurance provisions in any contracts it enters into with contractors in connection with the construction and completion of any Improvements to the Premises, and Lessee further agrees to provide City, prior to commencement of any Improvements, certificates of insurance evidencing the contractor's compliance with this Article:

(1) Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of its work to be performed under this Contract has been completed and accepted (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein. All policies shall be endorsed to provide City with at least ten (10) days prior written notice of any modification, cancellation, restriction or termination to the policy.

(a) Workers' Compensation and Employers Liability Insurance Coverage. The Contractor, at its expense, shall provide proof of workers' compensation insurance. The workers' compensation insurance must be in compliance with Florida Statute 440 and the employers liability insurance must be a minimum of \$500,000. Exceptions and exemptions can only be made if they are in accordance with Florida Statute.

(b) Commercial General Liability Insurance Coverage. The Contractor, at its expense, shall provide proof of commercial general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. This coverage must include, but is not limited to, coverage for the liability assumed by the Contractor under the indemnity provision of this Agreement, coverage for premises/operations, products/completed operations, broad form contractual liability and independent contractors.

(c) Business Automobile Insurance. The Contractor, at its expense, shall provide proof of automobile liability insurance in an amount not less than \$1,000,000 per occurrence combined single limit for both bodily injury and property damage, including coverage for owned, hired, borrowed and non-owned vehicles.

ARTICLE 32. FINAL REPOSITORY- PRIOR AGREEMENTS – RECORDING- THIRD PARTY BENEFICIARIES

32.01 The parties mutually represent and warrant to each other that this Lease Agreement, and all Exhibits, constitutes the final repository of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease been induced on the part of any party except as expressed in writing in this Agreement.

32.02 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether

oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity hereto.

32.03 Recording of Lease. Lessee shall, at its own expense, record this Lease Agreement or a Memorandum of Lease in the Public Records of Broward County, Florida. If the latter is desired, Lessee shall prepare the document and submit it to Lessor for execution, subject to approval as to its form by the City Attorney of Lessor. Lessee shall immediately forward a copy of the recorded Lease or the recorded Memorandum of Lease to the City.

32.04 Third Party Beneficiaries. Neither Lessee nor Lessor intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

ARTICLE 33. APPLICABLE LAW-VENUE

33.01 This Lease Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida, and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.

ARTICLE 34. FORCE MAJEURE

34.01 If a Force Majeure prohibits or prevents a party, whether directly or indirectly, from performing any of its obligations under this Agreement, such party shall be excused from such performance, except making payments, until the Force Majeure terminates or is removed. During such period of prevention or prohibition, the parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible.

ARTICLE 35. RADON GAS

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

ARTICLE 36 MISCELLANOUS

36.01 Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Lease shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

LESSOR

WITNESSES:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida.

By _____
JOHN P. "JACK" SEILER, Mayor

Print Name

By _____
LEE R. FELDMAN, City Manager

Print Name

ATTEST:

JONDA K. JOSEPH, City Clerk

Approved as to form:

Assistant City Attorney

LESSEE

FTL WATERRESORT, LLC, a Florida limited liability company

WITNESSES:

Print Name

Print Name

By _____

Name/Title: _____

STATE OF FLORIDA:

COUNTY OF _____ :

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ as _____ of _____, a _____ on behalf of the _____. Who has provided _____ as identification or is personally known to me.

Notary Public, State of Florida

(SEAL)

Name of Notary Typed, Printed or Stamped
Commission Expires: _____

Commission Number

**EXHIBIT A
PREMISES**

DRAFT

EXHIBIT B CONCEPTUAL SITE PLAN



MASTER PLAN - JUNE 12, 2010



**EXHIBIT C
PROJECT SCHEDULE**

Effective Date	Date upon which Lease is executed by both parties and approved by the FAA
Start of Due Diligence	Effective Date
End of Due Diligence	Later of 270 Days after Effective Date or 30 Days after Rezoning
Commence Design of Project	Within 45 days of Effective Date
Complete Design of Project	Within 3 months after commencing design
Commence Construction Documents	Within 180 Days from Effective Date
Complete Construction Documents	Within 4 months after commencing construction documents
Application for Permits	Within 180 days of Effective Date
Complete permitting	Within 3 months of permit application
Commence Construction	271 Days from the Effective Date
Complete Construction/ Final CO	540 Days from the Effective Date
Phase 1 of Project open to public	Within 18 months from the Commencement Date

EXHIBIT D
NON DISTURBANCE RECOGNITION AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE RECOGNITION AND ATTORNMENT AGREEMENT (this "**Agreement**"), is made as of the ____ day of _____, 20__, by and among **The City of Fort Lauderdale**, a municipal corporation, having a mailing address at c/o City Manager 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 ("**Fee Owner**"), _____, a Florida _____ having a mailing address at c/o Schlitterbahn Waterparks and Resorts, 381 East Austin Street, New Braunfels, Texas 78130 ("**Landlord**") and _____, a _____, having a mailing address at _____ ("**Tenant**"). Fee Owner, Landlord and Tenant are sometimes hereinafter referred to as the "**Party(ies)**."

RECITALS:

A. Fee Owner, as landlord, and Landlord, as tenant, are parties to that certain Lease Agreement dated _____, 2014, such Lease being recorded in Official Records Book _____, Page _____, Public Records of Broward County, Florida (the "**Senior Lease**"), pursuant to which Fee Owner leased to Landlord certain premises located in the City of Fort Lauderdale, County of Broward, State of Florida (the "**Entire Premises**"). The Entire Premises is more fully described on Exhibit A attached hereto and made a part hereof;

B. Landlord, as landlord, and Tenant, as tenant, entered into that certain lease dated _____, 20__ (the "**Lease**"), pursuant to which Landlord leased to Tenant a portion of the Entire Premises more particularly described in the Lease (the "**Demised Premises**");

C. _____ as an inducement to Tenant to enter into the Lease, Article ____ thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Fee Owner; and

D. the Parties desire to satisfy the foregoing condition and to provide for the non-disturbance and recognition of Tenant by Fee Owner or anyone claiming through Fee Owner.

AGREEMENTS:

In consideration of the foregoing Recitals, the mutual covenants, agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Fee Owner does hereby warrant and represent to Tenant that the Senior Lease is valid and in full force and effect as of the date hereof, that the term of the

Senior Lease has heretofore commenced, that there are no defaults by either party thereunder, Landlord is, as of the date hereof, the Tenant under the Senior Lease. By execution hereof, Landlord certifies to Fee Owner that nothing contained in the Senior Lease prohibits or restricts the execution and delivery of the Lease.

2. Fee Owner does hereby consent to the execution and delivery of the Lease and all of the terms and conditions thereunder. Provided Tenant is not then in default (beyond any applicable notice and cure periods) in the payment of rent or other sums payable by Tenant under the terms of the Lease or under any other provision of the Lease, Fee Owner does hereby agree that, if the term of the Senior Lease shall be canceled or shall terminate or expire prior to the expiration of the term of the Lease, or if Fee Owner shall come into possession of all or any part of the Demised Premises described in the Lease prior to the expiration of the term of the Lease, the Lease shall continue in full force and effect in accordance with its terms and Tenant's rights in the Demised Premises and Tenant's rights under the Lease, including without limitation, the provisions of the Lease with respect to proceeds of insurance and actions of public authority by eminent domain, and Tenant's use, possession and enjoyment of the Demised Premises, shall not be disturbed except for such cause as would entitle Landlord to terminate the Lease in accordance with the terms and conditions contained in the Lease. Provided Tenant is not then in default (beyond any applicable notice and cure periods) in the payment of rent or other sums payable by Tenant under the terms of the Lease or under any other provision of the Lease, Fee Owner shall take no action which shall in any way interfere with any right of Tenant under the Lease, and the Demised Premises shall be and remain subject to the Lease.

3. Provided Tenant is not then in default (beyond any applicable notice and cure periods) in the payment of rent or other sums payable by Tenant under the terms of the Lease or under any other provision of the Lease, upon the cancellation, termination or expiration of the term of the Senior Lease prior to the expiration of the term of the Lease as such term may be extended, whether the Senior Lease shall so terminate or expire, or be canceled, upon the expiration of its term as stated therein or on any other date, and whether upon the election of either Fee Owner or Landlord thereunder, or in any other manner, Fee Owner shall recognize Tenant as tenant of the Demised Premises for the balance of the term of the Lease, as extended, in accordance with all of the provisions of the Lease and Fee Owner shall then and thereafter perform and observe all of the agreements and conditions to be performed or observed on the part of Landlord, as the landlord under the Lease.

4. Tenant does hereby agree that, if the term of the Senior Lease shall be canceled or terminated prior to the expiration of the Lease, Tenant agrees that Tenant's use and occupancy of the Demised Premises shall be subject to the same terms and conditions of the Lease and Tenant shall recognize, and attorn to, Fee Owner as the landlord under the Lease in accordance with the terms and conditions contained in the Lease, and, without the necessity of entering into a new lease, (x) Tenant agrees to honor the terms and conditions of the Lease and to attorn to Fee Owner, its successors or assigns, to the same extent and with the same force as if Fee Owner were the Landlord under the Lease, and (y) Fee Owner shall thereupon be entitled, but not

obligated, to exercise the claims, rights, powers, privileges, options and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Fee Owner were named herein as the landlord.

5. Fee Owner shall not, by virtue of this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Fee Owner shall have terminated the Senior Lease or Landlord's right to possession thereunder, and then only to the extent of liabilities or obligations accruing subsequent to the date of such termination; unless such liabilities or obligations continue from and after the date upon which Fee Owner succeeds to the interest of Landlord. Notwithstanding anything to the contrary contained herein, Fee Owner shall not be subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the date upon which Fee Owner succeeds to the interest of Landlord, except to the extent that (A) such offsets are expressly provided for under the Lease or (B) such offsets were deducted by Tenant prior to the date upon which Fee Owner succeeds to the interest of Landlord.

6. Except as set forth in the Lease, Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment, and Fee Owner shall not be bound by, and shall be entitled to recover from Tenant as rent under the Lease, any payment of rent or additional rent made by Tenant to Landlord for more than one (1) month in advance (except as set forth in the Sublease).

7. Upon delivery to Tenant by Fee Owner of a written notice certifying the Senior Lease has been terminated or a certified final order of a court of competent jurisdiction terminating the Senior Lease or Landlord's right to possession thereunder, together with written notice from Fee Owner that the rentals under the Sublease should be paid to Fee Owner, Tenant shall thereafter pay to Fee Owner all rentals and other monies due and to become due to the landlord under the Lease.

8. References herein contained to the term of the Senior Lease and the term of the Lease shall mean the term thereof as then extended pursuant to the provisions thereof.

9. The agreements contained herein shall be self-executing without the requirement of any further instrument or act by any party referred to herein. This Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto and its successors and assigns. This Agreement shall be governed by and construed according to the laws of the State of Florida.

10. The term "Fee Owner" as used in this Agreement means only the owner for the time being of the Property, so that in the event of any sale or transfer of an interest therein, the party hereto designated as Fee Owner shall and thereby is entirely freed and relieved of all covenants and obligations of the Fee Owner hereunder and any such purchaser or transferee shall, however, be bound hereby as Fee Owner.

11. Notwithstanding anything to the contrary contained herein, under no circumstances will the rights of Tenant hereunder extend beyond the end of the Term and applicable Renewal Terms (as those terms are defined in the Senior Lease).

12. Notwithstanding anything to the contrary herein, in the event of a conflict between this Agreement and the Lease, the Lease shall have priority.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

IN TESTIMONY WHEREOF, the Parties have executed this Non-Disturbance Recognition and Attornment Agreement as of the date set forth above.

FEE OWNER:

CITY OF FORT LAUDERDALE

a municipal corporation of the State of Florida

By: _____

Name: _____

Title: Mayor

By: _____

Name: _____

Title: City Manager

LANDLORD:

_____,

a _____

By: _____

Name: _____

Title: _____

TENANT:

a _____

By: _____

Name: _____

Title: _____

EXHIBIT E

Permissible Portion of Premises for use of Surcharge Funds

DRAFT

**EXHIBIT F
CONSENT TO MORTGAGE**

Prepared By and/Return to:

Steven W. Deutsch, Esq.
Frank, Weinberg & Black, P.L.
7805 SW 6th Court
Plantation, FL 33324

**CONSENT TO MORTGAGE AND
SECURITY AGREEMENT AND COLLATERAL
ASSIGNMENT OF LEASES, RENTS AND PROFITS**

THIS CONSENT TO MORTGAGE AND SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF LEASES, RENTS AND PROFITS (the "Agreement") is made as of this ___ day of _____, 2014, by THE CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida ("Lessor"), and _____, a Florida _____ ("Borrower"), in favor and for the reliance of _____ BANK ("Lender"),

WITNESSETH:

WHEREAS, Lessor is the owner of a certain parcel of land more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Lessor is the current landlord under and Borrower is the current tenant to that certain Lease Agreement dated _____, such Lease being recorded in Official Records Book _____, Page _____, Public Records of Broward County, Florida (collectively, the "Lease") concerning Borrower's occupancy of the Property (the "Leased Property"); and

WHEREAS, Borrower has informed Lessor that Lender has committed to make a loan to Borrower in the stated principal amount of \$_____.00 (the "Loan") which will be secured by, among other things, a Leasehold Mortgage and Security Agreement, and Notice of Future Advance on the Leased Property (but not the fee interest of Lessor) and a Collateral Assignment of Leases, Rents and Profits (collectively the "Mortgage").

NOW, THEREFORE, in consideration of the covenants, terms, conditions and agreements herein contained, and in consideration of other good and valuable consideration, each to the other, the sufficiency and receipt of which are hereby acknowledged, Lessor and Borrower hereby agree that, notwithstanding anything to the contrary contained in the Lease, so long as the Loan shall remain outstanding, the following shall apply;

1. Lessor and Borrower hereby consent to the execution by Borrower (but not by Lessor), delivery and recordation of the Mortgage as security for the Loan.

Lessor and Borrower acknowledge and consent that Borrower is encumbering Borrower's leasehold interest only and not Lessor's fee interest in and to the Leased Property and that Lender is a first leasehold mortgagee in connection with the Leased Property and in its capacity as a first leasehold mortgagee (i) Lender shall have the rights and privileges of a first leasehold mortgagee as set forth in and pursuant to the Lease, including, but not limited to, those rights afforded to a first mortgagee pursuant to Article 23 of the Lease, notwithstanding the fact that Lessor shall not join in or subordinate Lessor's fee interest in the Leased Property to the Mortgage; and (ii) as security for the Mortgage, Lender shall be granted a collateral assignment in and to all rights of the Borrower under the Lease and all rents, issues and profits in connection therewith and improvements thereon, including all right, estate and interest of the Borrower in all improvements and buildings on the Leased Property and Borrower's interest in all furniture, furnishings, fixtures and equipment situated in or upon the Leased Property, and all insurance policies and all insurance monies paid or payable in connection with the Leased Property and the improvements thereon, and Lender shall be entitled to assign its respective rights to any successor or assignee without Lessor's prior consent.

2. Lessor shall promptly notify Lender of any default by Borrower under the Lease and of any act or omission of Borrower which would give Lessor the right to cancel or terminate the Lease or to exercise any of its other rights or remedies under the Lease as provided in the Lease, and no notice by Lessor to Borrower under the Lease shall be deemed to have been duly given unless and until a copy thereof has been so served to the Lender. In the event of a default by Borrower under the Lease, Lessor shall permit Lender thirty (30) days after the date Lessor shall have given notice to Lender to cure a monetary default under the Lease and a reasonable time (but no less than sixty (60) days after the date Lessor shall have given notice to Lender) to cure a nonmonetary default and Lessor shall not terminate the Lease in the event Lender cures or commences to diligently cure such default within the applicable time period. No default shall be deemed to exist under the Lease in respect of the performance of work to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced promptly to rectify the same and shall be prosecuted to completion with diligence and continuity. Notwithstanding the foregoing, Lender shall have no obligation to remedy such default, act or omission.

3. If Lender shall succeed to the rights of Borrower under the Lease through possession or a foreclosure action, delivery of a deed or assignment of the Lease in lieu of foreclosure or otherwise or if another person purchases the leasehold estate in and to the Leased Property, upon or following foreclosure of the Mortgage (or delivery of a deed or assignment of the Lease in lieu of foreclosure) or execution of a replacement lease with Lessor (on account of a rejection of the Lease in any bankruptcy, insolvency or similar proceeding), Lessor shall recognize Lender (or its nominee or designee), or such purchaser, as Lessor's tenant under the Lease or replacement lease (a "Successor-Tenant"). Furthermore, the Lease shall continue in full force and effect as if it were a direct lease between Successor-Tenant and Lessor upon all terms, conditions and covenants as are set forth in the Lease except that Successor-Tenant shall not (i) be liable for any previous act or omission of Borrower under the Lease, except for

any monetary defaults which are rightfully due; (ii) be subject to any offset defense or counterclaim which shall have theretofore accrued to Lessor against Borrower, except for any monetary defaults which are rightfully due; or (iii) be bound by any modification of the Lease unless such modification shall have been expressly approved in writing by Lender.

4. So long as there is no monetary default by the Borrower under the Lease which remains uncured by Borrower and/or Lender beyond the applicable cure period, all of Lessor's rights and interests to the rents, issues and profits which might otherwise accrue to the Borrower for the use, enjoyment and operation of the Leased Property and improvements thereon including, but not limited to: (i) any lien rights Lessor may have pursuant to the Lease, (ii) any lien rights Lessor may have pursuant to any applicable statute, and (iii) any right Lessor may have to the rents due under any subleases affecting the Leased Property, shall be and remain subject and subordinate to the lien, security interest, encumbrance and all of the terms, covenants and conditions contained in the Mortgage; provided, however, upon a monetary default by the Borrower under the Lease and notice to Lender, Lessor's rights and interest expressed in this paragraph 4 shall no longer be subject to or subordinate to Lender's Mortgage if such monetary default remains uncured by Borrower and/or Lender beyond the applicable cure period.

5. As between Borrower and Lender, but not between Lessor and Borrower or Lender, the provisions of the Mortgage shall control the disposition of any insurance proceeds or condemnation awards payable in connection with the Leased Property. If Lessor or Borrower shall receive any insurance proceeds or condemnation awards with respect to the Leased Property, the same shall be applied in accordance with the terms and provisions of the Lease or any election made thereunder by Lender.

6. Borrower shall not enter into any agreement providing for a surrender, modification, alteration or amendment of the Lease without first obtaining Lender's written consent and any such agreement providing for a surrender, modification, alteration or amendment of the Lease without Lender's consent shall be null and void.

7. In the event the Lease is terminated prior to the expiration of the term thereof due to a default of Borrower, or by a rejection of the Lease in a bankruptcy, insolvency or similar proceeding involving Borrower or the Leased Property, the Lessor shall serve upon the Lender written notice of such termination or rejection, together with a statement of any and all sums which would at that time be due under the Lease but for such termination or rejection, and of all other defaults, if any, under the Lease then known to the Lessor. Upon payment in full to Lessor within thirty (30) days of said notice all such sums as to be rightfully due, the Lender (or its nominee or designee) shall have the right to take possession of the Leased Property (commencing from the date of the Lender's receipt of such notice) and to operate same under the same terms and conditions contained in the Lease and all existing and future subleases affecting the Leased Property shall remain in full force and effect pursuant to the terms of such subleases. In such case, Lessor hereby subordinates to the Lender any purported ownership rights to all of Borrower's right, estate and interest in the Leased Property (but not Lessor's interest, right or estate in the fee property), and all improvements and

buildings and Borrower's interest in all furniture, furnishings, fixtures and equipment then situated in or upon the Leased Property, together with all rents, issues and profits of the Leased Property and the improvements thereon, whether then accrued or to accrue, and all insurance policies and all insurance monies paid or payable thereunder so long as Lender (or its nominee or designee) is in possession of the Leased Property and operating the same under any new lease agreement as provided below. Furthermore, provided Lender has cured all monetary defaults as set forth above, Lessor shall not, in any event, enter into direct leases with the subtenants or accept rental payments from subtenants unless Lender specifically waives, in writing, its right to enter into a direct Lease with Lessor. Furthermore, the Lender shall have the option to obtain from the Lessor a new lease agreement in accordance with and upon the following terms and conditions:

Upon the written request of the Lender within thirty (30) days after service of such notice of termination or rejection, the Lessor shall enter into a new lease agreement with Lender (or its nominee or designee) as follows: Such new lease agreement shall be effective as of the date of termination or rejection of the terminated Lease and shall be for the remainder of the term of the terminated or rejected Lease and at the rates and upon all the agreements, terms, covenants and conditions thereof, including any applicable rights of renewal. Any new lease agreement entered into pursuant to this paragraph shall be identical to the terms and provisions of the Lease (with the exception of appropriate changes in the name of the tenant thereunder), and except where the Lessor and Lender (or its nominee or designee) otherwise agree to different provisions, and all existing and future subleases affecting the Leased Property shall remain in full force and effect pursuant to the terms of such subleases. Without limiting the generality of the foregoing, all terms in the Lease that are subject to negotiation, such as rental amounts due during renewal periods, shall continue to be subject to negotiation in the new lease agreement.

8. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to Lender: _____ Bank

If to Lessor: The City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

If to Borrower: FtL WaterResort, LLC

c/o Schlitterbahn Waterparks and Resorts
381 East Austin Street
New Braunfels, TX 78130

9. The agreements herein contained shall bind and Inure to the benefit of the successors and assigns of the parties hereto and, without limiting such, the agreements of the Lessor and Borrower shall specifically inure to the benefit of any purchaser of the Leased Property at a sale foreclosing the Mortgage and shall be deemed covenants running with the land.

10. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

11. Lessor has joined in and granted this consent only and solely for the express purpose as stated herein and by executing and granting Lessor's consent as expressed in this Agreement, Lessor does not in any way amend or modify the Lease, except as set forth herein (including, but not limited to, paragraph 9), or waive, release or change Lessor's rights under the Lease not to enter into or otherwise grant or give any consent to any mortgage, security agreement or assignment of leases, rents and profits in the future or hereafter.

12. Notwithstanding anything to the contrary herein, in the event of a conflict between this Agreement and the Lease, the Lease shall have priority.

[Signature Pages Follow]

Printed

Name of Notary Typed, Stamped or

Commission Expires: _____

NOTARY ACKNOWLEDGEMENT FOR LESSOR

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said state, personally appeared _____

_____ of **THE CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, (*check one*) personally known to me, or proved to me on the basis of satisfactory evidence of: _____

_____ to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument and who did not take an oath.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for said State

Name of Notary Typed, Stamped or

Printed

Commission Expires: _____

EXHIBIT "A"