

## LEASE AGREEMENT BETWEEN BROWARD COUNTY AND SOUTH FLORIDA MATERIALS CORP.

This Lease Agreement ("Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and South Florida Materials Corp., a Florida corporation ("Lessee") (each a "Party" and collectively referred to as the "Parties").

### RECITALS

A. County owns and operates Port Everglades, a deep-water port located in Broward County, Florida.

B. Lessee desires to lease certain property from County so that Lessee may construct, and thereafter maintain and use, an asphalt turn lane and loading area to support its development on adjacent property.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1. DEFINITIONS

1.1. **Board** means the Board of County Commissioners of Broward County, Florida.

1.2. **Business Days** means Monday through Friday of each week, exclusive of County holidays, between the hours of 8:00 a.m. and 5:00 p.m. (Eastern).

1.3. **Lease Year** means the twelve (12) month period beginning on the Commencement Date, and ending twelve (12) months thereafter ("**Lease Year 1**"), and each twelve (12) month period thereafter until the date this Agreement expires or terminates ("**Lease Year 2**," "**Lease Year 3**," etc.).

1.4. **Port Department** means the County department established pursuant to Section 16.1 of the Broward County Administrative Code and responsible for administering and operating Port Everglades. All approvals by the Port Department required by this Agreement require the written approval of the Port Director or designee.

1.5. **Port Director** means the Chief Executive/Port Director of the Port Department.

1.6. **Port Everglades** or **Port** means the deep-water port located on the lower East Coast of the Florida peninsula at the adjoining city limits of the City of Fort Lauderdale, the City of Hollywood, and the City of Dania Beach, and all port facilities located thereon, as more specifically defined in the Tariff.

1.7. **Tariff** means Port Everglades Tariff Number 12, as may be amended, which is electronically filed with the U.S. Federal Maritime Commission, filed in the FMC-ATFI system, and located at <https://www.porteverglades.net/development/tariff>.

## ARTICLE 2. PREMISES

2.1. Premises. Subject to the terms of this Agreement, County leases to Lessee that certain real property comprised of Five Thousand Three Hundred Twenty-three (5,323) square feet of land, as more particularly described on **Exhibit A**, together with all improvements located thereon (collectively, the "Premises").

2.2. Condition of Premises. County makes no representations or warranties whatsoever as to: (i) the condition of the Premises; or (ii) whether the Premises complies with applicable federal, state, and local laws, ordinances, rules, or regulations. The Premises is demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS**." Lessee represents, acknowledges, and agrees that it has had sufficient opportunity to inspect the Premises and accepts the Premises in "**AS IS CONDITION**" and "**WITH ALL FAULTS**." Lessee releases County from any and all claims and liabilities relating to or on account of the condition of the Premises or any failure of any of its component parts to be in working order, as applicable.

2.3. Use of Premises. Lessee may use the Premises solely for the purpose of constructing, and thereafter maintaining and using, an asphalt turn lane and loading area to support its development on adjacent property ("Approved Use"). Lessee shall conduct its operations in an orderly and commercially reasonable manner considering the nature of its operations.

2.4. Prohibited Use(s) of Premises. Lessee will not use, allow, or permit others to use any portion of the Premises: (a) for any purpose whatsoever, other than for the Approved Use, without the prior written consent of the Port Director; (b) in competition with any business conducted by County; (c) in any way that may unreasonably annoy, disturb (whether via vibrations, noise, or otherwise), endanger, or be offensive to any other user or tenant at Port Everglades; (d) in any way that may commit waste or cause injury on or about the Premises; (e) in any way that may cause the creation of any nuisance from dust, smoke, obnoxious odors, fumes, vapors, noise, or otherwise; or (f) to keep or store any explosives without the required notification to and prior approval of the Broward Sheriff's Office ("BSO") Fire Rescue Department located at Port Everglades. Lessee will not conduct, or allow or permit others to conduct, any welding or burning on the Premises until all required permits from County, the City of Hollywood, Florida, and the U.S. Coast Guard have been obtained, as applicable. County will not unreasonably withhold the issuance of any welding or burning permits that are issued by County. Lessee shall provide the Port Department with evidence that it has obtained all required permits within one (1) day after the Port Department's written demand therefor.

### ARTICLE 3. TERM AND TERMINATION

3.1. Effective Date. This Agreement shall become effective on the date it is executed by the last of the Parties executing this Agreement ("Effective Date").

3.2. Term. The term of this Agreement shall retroactively begin on July 1, 2022 ("Commencement Date"), and shall end five (5) years thereafter ("Term"), unless sooner terminated as provided herein.

3.3. Termination for Convenience. In addition to any other rights of termination set forth herein, this Agreement may be terminated for convenience by the Board with at least thirty (30) days' advance written notice to Lessee. Lessee acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance notice to Lessee of such termination in accordance with this section.

### ARTICLE 4. RENTALS, FEES, AND SECURITY DEPOSIT

4.1. Annual Rent. During the Term, Lessee shall pay rent, together with all applicable sales taxes thereon, to County for the Premises ("Annual Rent"). Annual Rent for Lease Year 1 shall be One Thousand Eight Hundred Forty-eight and 00/100 Dollars (\$1,848.00), plus applicable sales taxes, payable in equal monthly installments of One Hundred Fifty-four and 00/100 Dollars (\$154.00), plus applicable sales taxes.

4.2. Annual Rent Increases. On the first day of Lease Year 2 and each Lease Year thereafter (each an "Adjustment Date"), Annual Rent shall be increased to an amount equal to the greater of either: (i) the product of the Annual Rent in effect immediately preceding the applicable Adjustment Date, multiplied by the "CPI Multiplier" (as hereinafter defined); or (ii) the product of the Annual Rent in effect immediately preceding the applicable Adjustment Date, multiplied by 1.03. The product of such multiplication shall be the Annual Rent for such Lease Year, commencing on the applicable Adjustment Date. Upon determining such adjustment, the Port Department shall advise Lessee in writing of the new Annual Rent and the monthly installment.

4.2.1. The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the applicable Adjustment Date, and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the applicable Adjustment Date.

4.2.2. The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS - UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) (Consumer Price Index) issued by the Bureau of Labor Statistics, United States Department of Labor. The adjustments made based upon the provisions of this section shall be made solely by the Port Department. Any publication by either the United States Department of Labor or the United States

Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency that most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

4.2.3. Effective Date of Rental Adjustment. If an Annual Rent adjustment is required under this article or Article 8, the previous monthly rent amount shall continue to be paid by Lessee until the Port Department provides notice of the adjusted rent amount. The adjusted rent amount shall be retroactive to the date the rent should have been adjusted ("Corrective Date"). The amount that is the difference between the total rent paid by Lessee from the Corrective Date and the total amount of rent due for such period until Lessee commences paying the adjusted rent shall be due and payable to County within thirty (30) days following the Port Department's notice of the new adjusted rent amount. If Lessee disputes the amount of any adjustment of rent payments, Lessee shall continue paying rent to County in the amount required before the rent adjustment until such time as the dispute has been settled, at which time an adjustment, with interest thereon, will be made retroactive to the beginning of the adjustment period in which the dispute arose.

4.3. Licenses, Fees, and Taxes. Lessee shall timely pay all federal, state, County, and local taxes and fees, and all special assessments of any kind, that are now or may hereafter be levied upon the Premises (including all Improvements, as defined in Article 5), the leasehold estate granted by this Agreement, the business conducted on the Premises, any of Lessee's property used in connection therewith, and/or upon any rents or other sums payable hereunder, including, but not limited to, any ad valorem taxes attributable to the Premises, sales or excise taxes on rents, and personal property taxes against Lessee's tangible or intangible personal property. Lessee shall maintain in full force and effect all federal, state, county, and local licenses, local business taxes, and permits required for Lessee's business operation.

4.4. Utilities. Lessee, at its sole expense, shall be responsible for arranging for and paying for all utility services it requires for the Premises. No failure, delay, or interruption in the supplying of utilities shall be construed as an eviction of Lessee, or be grounds for any abatement of Annual Rent or any claim by Lessee for damages.

4.5. Method of Payment; Interest and Late Charges. The applicable monthly installment of Annual Rent shall be due and payable, in advance, and without billing, set-off, or deduction, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter, and shall be prorated if this Agreement expires or terminates on a date other than the final day of a month; provided, however, the applicable monthly installments of Annual Rent for the period between the Commencement Date and the Effective Date shall be due and payable

on the Effective Date. If Lessee fails to timely pay any amounts due, Lessee's account shall be placed in "Delinquent Status" and Lessee shall pay County, in addition to the amount otherwise due: (a) a finance charge of one and one-half percent (1.5%) for each month or portion thereof, starting thirty (30) days after the due date, that any invoice remains delinquent; and (b) a late charge equal to ten percent (10%) of any overdue amount if still unpaid fifteen (15) days after the due date. No acceptance by County of payments in whole or in part after a default by Lessee of any of the terms, covenants, or conditions hereof shall be deemed a waiver of any right on the part of County to collect the finance charge or late charge or terminate this Agreement. If placed in Delinquent Status, Lessee will be subject to the procedures set forth in Item 910 of the Tariff, as amended.

4.6. Dishonored Check or Draft. If County receives a dishonored check or draft in payment of any obligation arising under this Agreement, Lessee shall pay County a service charge in the amount established by County from time to time. In such event, and in addition to any other remedies available to County under this Agreement, at law or in equity, County may require that future payments be made by cashier's check or other means acceptable to County.

4.7. Weekends and Holidays. Should any payment due date fall on a weekend day or holiday, such payment shall be due and payable on the immediately preceding Business Day.

4.8. Place of Payments. All payments required to be made hereunder shall be made payable to Broward County and delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, Florida 33316, or to such other office or address as may be substituted by County therefor.

4.9. Security Deposit. As security for the payment of all monies due and the performance of Lessee's obligations under this Agreement, Lessee shall post a security deposit with County equal to Three Hundred Forty and 08/100 Dollars (\$340.08) ("Security Deposit"). The Security Deposit shall be submitted to County simultaneously with submission to County of this Agreement as executed by Lessee. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit ("Letter of Credit") in form and substance satisfactory to County, or a payment and performance bond ("Bond") in form and substance satisfactory to County. No interest shall be due or paid on the Security Deposit. County, upon at least fourteen (14) calendar days' notice to Lessee, may increase the amount of the required Security Deposit to reflect any increases in monies due. In addition, County, upon at least fourteen (14) calendar days' notice to Lessee, may increase the amount of the required Security Deposit if County determines, in its sole discretion, that an increase is warranted due to increased obligations under this Agreement or based upon Lessee's payment or performance history at Port Everglades. In the event of any Event of Default (hereinafter defined), in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to any and all amounts owed, whether before or after the expiration or earlier termination of this Agreement. Within five (5) Business Days after notice from County of any such draw, Lessee shall replenish the Security Deposit with cash, a new Letter of Credit, or new Bond, as applicable, so it equals the full amount of the required Security Deposit. If a Letter of Credit is

posted, the initial term and all renewal terms of the Letter of Credit shall be for a period of not less than one (1) year, and the Letter of Credit shall be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If a Bond is posted, the Bond shall provide coverage and be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If Lessee posts a cash deposit, then such cash deposit shall be retained by County throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. Not less than one hundred twenty (120) calendar days prior to any expiration date of the Letter of Credit or Bond, Lessee shall submit evidence in form satisfactory to County that said security instrument has been renewed. Each Letter of Credit shall be provided by a financial institution authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. Each Bond shall be executed by a surety company authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least five (5) years. Furthermore, such surety company must have at least an "A" rating in the latest revision of Best's Insurance Report. Any failure by Lessee to strictly comply with the terms of this section shall constitute an Event of Default, and the obligations of this section shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 5. IMPROVEMENTS**

5.1. Required Approval. No improvements, alterations, additions, or renovations, including the asphalt turn lane and loading area referenced herein and any drainage improvements (collectively, "Improvements"), may be constructed on the Premises unless Lessee obtains the prior written approval of the Port Department.

5.2. Required Contract Documents for Construction of Improvements. Prior to the commencement of construction of any Improvements, Lessee shall submit to the Port Department a complete set of the contract documents for approval by the Port Department (one (1) hard copy and one (1) .pdf format). Contract documents shall include, at a minimum, a site plan and complete plans and specifications of the contemplated construction. Unless otherwise agreed in writing by the Port Department, the plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida and shall consist of: (i) working drawings, (ii) technical specifications, (iii) schedule for accomplishing the Improvements, and (iv) such other information as may be required by the Port Department. All Improvements must be made in accordance with the requirements set forth in this Agreement. All of the plans and specifications shall be in such detail as may reasonably permit the Port Department to make a determination as to whether the construction will be consistent with the standards set forth in this Agreement. Any plans and specifications that have received the Port Department's written approval, and any amendments and changes thereto that have received the Port Department's written approval, are hereinafter referred to collectively as "Approved Plans." No construction may be performed on the Premises except pursuant to Approved Plans.

5.3. Changes to Approved Plans. No material changes shall be made to any Approved Plans without the prior written approval of the Port Department. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

5.4. Compliance with law. All Improvements constructed or installed by Lessee, its agents, or contractors, including the plans and specifications relating to same, shall conform to all applicable state, federal, County, and local agency (including divisions and departments of County) statutes, ordinances, building codes, fire codes, rules, and regulations, and design standards. The approval by the Port Department of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with Lessee.

5.5. Ownership. All Improvements to the Premises shall become County's property upon the expiration or earlier termination of this Agreement and shall be surrendered with and remain on the Premises (without cost to, or reimbursement by, County), excluding furnishings, equipment, and trade fixtures that are not permanently affixed to the Premises. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises and is not readily removable shall become part of the Premises as a leasehold improvement, whether or not such may be deemed a trade fixture. If any personalty is removed by Lessee, Lessee shall restore any damage to the Premises caused thereby. Notwithstanding any other provisions of this Agreement, the Port Department shall have the right, in their sole discretion, to require Lessee, at Lessee's sole cost, to remove any leasehold Improvements installed by Lessee prior to the date this Agreement terminates (including, if requested, the asphalt turn lane and loading area referenced herein) and restore the Premises to its original condition.

5.6. Certified Statements. Within one hundred and twenty (120) days after the installation of any Improvements, unless otherwise agreed in writing by the Port Department, Lessee must provide to the Port Department: (a) a certified statement from the construction contractor(s) stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material supplier, subcontractor, or laborer, and that all such fees and charges have been paid; and (b) a certified statement from the architect or engineer stating that the Improvements have been constructed in accordance with Approved Plans and in compliance with all applicable federal, state, local, and County laws, rules, ordinances, regulations, and building codes. Lessee shall provide, upon request, such backup documentation and releases of lien as may be required by the Port Department.

5.7. Liens. Lessee represents, warrants, and covenants to County that the Premises and all Improvements constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances created by Lessee or Lessee's agents, contractors, employers, officers, or invitees. If any such lien or notice of lien shall be filed against the Premises or any Improvements, Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction.

5.8. As-Built Plans and Specifications. Within one hundred twenty (120) days after the installation of any Improvements, unless otherwise agreed in writing by the Port Department, Lessee shall, at its expense, provide the Port Department with a complete set of "as-built" plans and specifications (one (1) hard copy and one (1) .pdf format), including mylar reproducible "record" drawings, and a complete set of machine-readable disks containing electronic data in an AUTOCAD format that meets the Port Department's graphic standards of the "as-constructed" or "record" plans for such Improvements (one (1) hard copy and one (1) .pdf format).

5.9. Approval from Other Governmental Agencies for Lessee's Improvements. In addition to the Port Department's approval, Lessee shall be responsible for obtaining all construction permits, complying with inspection requirements of the Broward County edition of the current South Florida Building Code, and obtaining any other required approval from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County, the State of Florida, and the federal government.

5.10. Americans with Disability Act Compliance. All Improvements made to the Premises shall be in conformity and consistent with the Americans with Disability Act of 1990, as same may be amended from time to time.

5.11. Failure to Obtain Approval. If any Improvement is made without the approvals required pursuant to this article, then, upon notice in writing, Lessee shall remove the same, or, at the sole option of the Port Department, cause the same to be changed to the satisfaction of the Port Department. In the case of any failure on the part of Lessee to comply with such notice, County may affect the removal or change and Lessee shall pay the cost thereof to County within ten (10) days following written demand for said payment.

5.12. Impact on Public Areas. During construction of any Improvements, Lessee shall maintain the public areas in the same manner and cleanliness as provided by County. Any such Improvements shall be made within the time specified in the approval from the Port Everglades Department and shall be undertaken with the least disturbance possible to the public and the operation of Port Everglades. Lessee shall provide a Maintenance of Traffic ("MOT") plan if requested by the Port Department.

5.13. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Lessee as a result of this Agreement, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Lessee shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibit B**.

5.14. Construction and Labor and Material Bonds. Lessee agrees that before commencing any work or construction of Improvements, unless otherwise agreed in writing by the Port Department, Lessee shall obtain or require the contractors to maintain, at all times, a valid payment bond and a valid performance bond, each of which shall be in form and content satisfactory to County and in an amount not less than the amount covering the full amount of the work being performed. Such bonds must guarantee to County the completion and



performance of the work being performed as well as full payment of all suppliers, laborers, or subcontractors employed in the performance of the project. The bonds shall continue in effect for one year after final completion and acceptance of the work. The bonds must be executed by a surety company of recognized standing, authorized to do business in the state of Florida as a surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. In addition, the surety company must meet at least one of the following additional qualifications:

5.14.1. The surety company shall hold a current certificate of authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, as revised. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, as revised (including 31 CFR Section 223.10 and Section 223.111). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

5.14.2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

In lieu of such bonds, Lessee may furnish an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by County and remain in effect for one (1) year after final completion and acceptance of the work.

It is understood and agreed that Lessee shall be responsible for payment of all costs and expenses relating to (i) Lessee's Improvements, including, but not limited to, the design, permitting, and construction thereof, and (ii) all other improvements necessary to Lessee's use of the Port facilities, including, but not limited to, improvements mandated by any governmental authority having jurisdiction over the Port facilities.

## **ARTICLE 6. MAINTENANCE OF PREMISES**

6.1. Lessee Maintenance and Repair Responsibilities. Commencing on the Commencement Date, Lessee shall, at its sole expense, maintain and repair the Premises and the fixtures, equipment, Improvements, and appurtenances thereon in a clean, safe, neat, orderly, sanitary, and presentable condition, and free and clear of all trash, rubbish, debris, rodents, insects, and other pests. Lessee shall furnish and pay for its own janitorial service in the Premises and shall cause all waste, garbage, and rubbish to be removed from the Premises daily. Such waste, garbage, and rubbish may not be deposited on any part of the Port without the written permission of the Port Department. All maintenance and repairs completed by Lessee or on its behalf shall be of first-class quality in both materials and workmanship. All maintenance and repairs shall be completed in conformity with the rules and regulations prescribed from time to time by federal, state, county, and local authorities having jurisdiction over the work. Upon failure of Lessee to perform its obligations set forth in this article, after reasonable notice to Lessee, County may perform or cause the obligations to be performed and Lessee shall pay the cost thereof to County within ten (10) days following written demand for said payment.

## **ARTICLE 7. DEFAULT BY LESSEE**

7.1. Event of Default by Lessee. The occurrence of any of the following shall constitute an "Event of Default" by Lessee under this Agreement:

7.1.1. Lessee fails to pay any monies when due and continues in its failure to pay for a period of fifteen (15) days following the date written notice to cure is sent by the Port Department to Lessee;

7.1.2. Lessee fails to comply with any provision of this Agreement and (a) such failure continues for a period of fifteen (15) days following the date written notice to cure is sent by the Port Department to Lessee; (b) in the case of any obligation that cannot be cured with due diligence and good faith within fifteen (15) days, as determined by the Port Department, Lessee fails to proceed promptly and with due diligence and good faith to begin to cure the default within fifteen (15) days after such notice is sent by the Port Department; or (c) having begun to cure the default in a timely manner, Lessee thereafter fails to diligently prosecute the cure to completion;

7.1.3. Lessee assigns all or substantially all of Lessee's assets for the benefit of Lessee's creditors;

7.1.4. Lessee abandons, deserts, or vacates the Premises, or ceases to operate in the Premises in compliance with this Agreement, for a period of thirty (30) consecutive days;

7.1.5. By or pursuant to, or under the authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or

substantially all of the assets of Lessee, and such possession or control shall continue in effect for a period of ninety (90) days;

7.1.6. Lessee, or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of Lessee, is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, where the illegal conduct or activity (i) is considered to be a Public Entity Crime as defined by Chapter 287, Florida Statutes, as amended; (ii) is customarily considered to be a “white collar crime” or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; (iii) involves an act of moral turpitude, meaning conduct or acts that tend to degrade the person in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community, or to ridicule public morals, or decency, or to harm the image of County by virtue of its association with Lessee; or (iv) results in a felony conviction. Notwithstanding the foregoing, Lessee may abate this triggering event by submitting evidence satisfactory to the Port Department that Lessee has implemented best business practices seeking to address such illegal conduct or activity and prevent it from reoccurring, and requiring the offending person(s) to resign and has otherwise removed the person from Lessee’s management activities related to this Agreement;

7.1.7. Suspension or revocation of Lessee’s operations by a governmental unit or agency having jurisdiction over the Premises or the business as being conducted thereon;

7.1.8. Lessee assigns this Agreement in violation of Article 10; or

7.1.9. The material inaccuracy of any representation or warranty made or given by Lessee in this Agreement and Lessee’s failure to cure such inaccuracy to the satisfaction of the Port Department within fifteen (15) days after written notice to cure is sent to Lessee.

7.2. County’s Remedies for Lessee’s Default. If one or more Events of Default occurs, County may, at its sole option, exercise one or more of the following rights after notice to Lessee:

7.2.1. Terminate this Agreement;

7.2.2. Sue Lessee for all damages, costs, and expenses arising from the Event of Default, and recover all such damages, costs, and expenses, including reasonable costs and attorneys’ fees, at both trial and appellate levels;

7.2.3. Seek an injunction or specific performance of any such term or provision of this Agreement. Lessee waives any and all requirements that County post any security or collateral that may be otherwise required as a condition for County to obtain specific performance, injunctive relief, or other equitable relief. The Parties agree and stipulate that County may not have an adequate remedy at law for an Event of Default and, if such

determination is made by County, Lessee agrees that injunctive relief or specific performance are required to protect the public from irreparable harm;

7.2.4. Draw down on the Security Deposit; and/or

7.2.5. Exercise any and all other remedies available to County under this Agreement, at law, or in equity.

7.3. Remedies under Federal Bankruptcy Laws. Neither this Agreement nor any rights or privileges under this Agreement shall be an asset of Lessee in any bankruptcy, insolvency, or reorganization proceeding. If County is not permitted to terminate this Agreement because of the provisions of any applicable laws, including, but not limited to, the United States Bankruptcy Code, Lessee or any trustee for it shall, within fifteen (15) days, upon request by County to the applicable court or administrative body, assume or reject this Agreement; provided, however, that Lessee (or successor) may not assume this Agreement unless all Events of Default have been cured, County shall have been compensated for any monetary loss resulting from such Events of Default, and County shall be provided with adequate assurance of full and timely performance of all provisions, terms, and conditions of this Agreement on the part of Lessee to be performed.

Notwithstanding the foregoing, to the greatest extent permitted under applicable law, upon the filing by or against Lessee of any proceeding under federal bankruptcy laws, if there has been an Event of Default within the six (6) months preceding such filing, County shall have the right to immediately terminate this Agreement, in addition to other remedies provided under provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code. Such termination shall be by written notice to Lessee within sixty (60) days after the date of Lessee's initial filing in bankruptcy court.

7.4. Payment under Protest. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Lessee with respect to any obligation or alleged obligation of Lessee to pay money, the payment under protest by Lessee of the amount claimed by County to be due shall not waive any of Lessee's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Lessee any amount determined as not due. County shall not be required to pay any interest on any such reimbursed sums.

7.5. Holdover. Any holding over of Lessee after the expiration or earlier termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as amended, and, unless otherwise agreed in writing by the Port Director, Lessee shall be required to pay to County during any holdover period monthly rent equal to double the monthly installment of the Annual Rent for the Premises based on the rates then in effect under this Agreement. All other provisions of this Agreement shall remain in effect during such holdover period. Lessee shall be liable to County for all loss or damage on account of any such holding over after the expiration or earlier termination of this Agreement, whether or not such loss or damage may be contemplated as of the Effective Date. County reserves the right to pursue all remedies available to it under

applicable laws as a result of Lessee's holdover. Acceptance of any payments by County in the event that Lessee fails or refuses to surrender possession shall not operate as County's consent to Lessee's continued possession nor shall it constitute a waiver by County of its right to immediate possession of the Premises.

7.6. Habitual Default. If Lessee has frequently, regularly, or repetitively breached any of the terms, covenants, or conditions of this Agreement, regardless of whether Lessee has cured each or any individual breach, Lessee may be determined by County to be a "Habitual Violator." At the time that such determination is made, County shall issue to Lessee a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Lessee that there shall be no further notice or cure periods to correct any subsequent breach and that any subsequent breach of whatever nature, taken with all previous breaches, considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. If any such subsequent breach, County may terminate this Agreement upon the giving of written notice of termination to Lessee, such termination to be effective upon delivery of the notice to Lessee.

## **ARTICLE 8. DAMAGE**

8.1. Damage Caused by Lessee. If damage is caused by the act or omission of Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, Lessee's payments shall not abate and Lessee shall be responsible, at its expense, for making all the necessary repairs as approved by the Port Department. If Lessee fails to make the necessary repairs in a timely manner as determined by the Port Department, then the Port Department may, at their option, cause such repairs to be completed and Lessee shall reimburse County for the costs and expenses incurred in such repair, plus an administrative fee as permitted under the Broward County Administrative Code.

## **ARTICLE 9. INDEMNIFICATION AND INSURANCE**

9.1. Indemnification. Lessee shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Lessee, or by any intentional, reckless, or negligent act or omission of Lessee, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Lessee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Port Department and the County Attorney, any sums due Lessee under this Agreement may be

retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

9.2. Insurance. For the duration of the Agreement, Lessee shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit C** in accordance with the terms and conditions of this article. Lessee shall maintain insurance coverage against claims relating to any act or omission by Lessee, its agents, representatives, employees, or subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.3. Additional Insured. Lessee shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in **Exhibit C** on all policies required under this article.

9.4. Certificates of Insurance. On or before the Effective Date, Lessee shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Lessee shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

9.5. Remain in Full Force. Lessee shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Lessee has been completed, as determined by the Port Department. Lessee or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Lessee shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.6. Insurer. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

9.7. Broader Coverage. If Lessee maintains broader coverage or higher limits than the minimum insurance requirements stated in **Exhibit C**, County shall be entitled to any such broader coverage and higher limits maintained by Lessee. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Lessee.

9.8. Self-Insured. Lessee shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in **Exhibit C** and submit to County for approval at least fifteen (15) days prior to the Effective Date. Lessee shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and

related investigations, claim administration, and defense expenses within the retention. Lessee agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Lessee agrees to obtain same in endorsements to the required policies.

9.9. Subrogation. Unless prohibited by the applicable policy, Lessee waives any right to subrogation that any of Lessee's insurers may acquire against County, and agrees to obtain same in an endorsement of Lessee's insurance policies.

9.10. Subcontractor Insurance. Lessee shall require that each subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Lessee under this article. Lessee shall ensure that all such subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies.

9.11. Failure to Maintain Insurance. If Lessee or any subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Lessee. Lessee shall not permit any subcontractor to provide services unless and until the requirements of this article are satisfied. If requested by County, Lessee shall provide, within one (1) Business Day, evidence of each subcontractor's compliance with this article.

9.12. Claims-Made Coverage. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in **Exhibit C**; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Lessee must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in **Exhibit C**.

## **ARTICLE 10. ASSIGNMENT, SUBLETTING, AND SUBORDINATION**

10.1. County Consent Requirements; Factors and Standards. Lessee shall not (i) sublet the Premises or any part thereof; (ii) permit any transfer, assignment, pledge, or encumbrance of this Agreement; (iii) transfer, assign, pledge, or otherwise encumber or subordinate this Agreement or any rights or obligations hereunder; or (iv) allow same to be assigned by operation of law or otherwise (collectively, any such action hereinafter referenced as an "Assignment") without the Port Department's prior written consent, which consent may be granted or withheld by the Port Department in its sole discretion and conditioned upon such additional terms and conditions as the Port Department deems necessary. The factors upon which the Port Department may base its decision on whether to grant such consent shall include, but not be limited to: (i) an assessment of whether the proposed assignee meets standards of creditworthiness; (ii) whether the Premises will be used in connection with the maritime industry for the purposes described herein; and (iii) an assessment of the ability of the proposed assignee to perform the obligations

under this Agreement. In the event of any request for an Assignment by Lessee, the proposed assignee shall be required to execute a written assumption lease, agreeing to assume and abide by all of the terms and provisions of this Agreement, which assumption lease must be acceptable to the Port Department. County shall not unreasonably withhold its consent to an Assignment. In no case will an Assignment be granted if a default by Lessee shall have occurred and remain uncured.

10.2. No Release. In the event of any Assignment, Lessee shall not be released of its obligations and liabilities hereunder. County, as a condition of approving an Assignment, may increase the Annual Rent and fees payable, and may require modification of any other terms or conditions of this Agreement and/or execution of additional documents, including an irrevocable Guaranty of Payment and Performance by Lessee or any other proposed assignor.

10.3. Assumption of Liability. No Assignment shall be binding on County unless and until such assignee, transferee, or sublessee executes a written lease or assumption lease with County assuming all liabilities and obligations of Lessee hereunder.

10.4. Change in Lessee's Status. For purposes of this article, an "Assignment" shall include: (i) any transfer of this Agreement by merger, consolidation, liquidation, or by operation of law; and (ii) any change in ownership or power to vote a majority of the outstanding voting stock or interest of Lessee. Notwithstanding the foregoing, the following shall not be deemed an Assignment: (i) a transfer of stock or interests in Lessee among its current (as of the date this Agreement was executed by County) owners and/or their affiliates; (ii) a transfer of stock or interests in Lessee resulting from the death of a stockholder, member, partner, or joint venturer; or (iii) any transfers of stock in Lessee or any assignee, transferee, or sublessee which stock is publicly traded on a national stock exchange.

10.5. Voiding of Assignment or Sublease; Right to Collect Rent. If Lessee takes any action prohibited under this article without the Port Department's prior written consent, then any such Assignment shall be null and void and of no force or effect, and in addition to all other available remedies, the Port Department shall be entitled to immediately terminate this Agreement. In no case may the activities, uses, privileges, and obligations authorized herein regarding the Premises or any portion thereof be assigned for any time period for which a default of this Agreement by Lessee has occurred and remains uncured.

In addition, if the Premises is occupied by any entity without County's prior written consent in violation of this article, then County may collect rent from the assignee, sublessee, or any entity that claims a right to this Agreement or that occupies the Premises, and the Port Department shall apply the net amount collected to the Annual Rent due under this Agreement; however, no such collection shall be deemed a waiver by County of the provisions of this article or any acceptance by County of any assignee, sublessee, or any entity who claims a right to this Agreement or who occupies the Premises.

10.6. Subordinate to County. Lessee acknowledges and agrees that each sublessee of Lessee is subject to all of the terms and provisions of this Agreement, including, but not limited to, the



requirement that each such sublessee must comply with all federal, state, and local laws, ordinances, rules, regulations, and orders in effect that are applicable to the operations being conducted on or the use and enjoyment of the Premises by the sublessee. Notwithstanding any sublease of the Premises to which County has consented as provided herein, Lessee shall remain responsible for ensuring that each and every term and provision of this Agreement is fully abided by and complied with and, in that regard, any failure by a sublessee to abide by and comply with any term or provisions of this Agreement shall be deemed a default by Lessee hereunder, entitling County to any and all remedies available hereunder and pursuant to applicable Florida law. Each sublease of the Premises to which County has consented as provided herein shall be subordinate in all respects to all the terms and provisions of this Agreement, and upon any termination or expiration of this Agreement, each sublease of the Premises shall also terminate or expire contemporaneously on the effective termination date or expiration date of this Agreement.

10.7. Mortgage on Leasehold. No leasehold mortgage shall be binding upon County without the prior written consent of the Port Department. However, County will accept performance or payment by the holder of any leasehold mortgage to which the Port Department has consented, of any term and condition of this Agreement required to be made by Lessee, with the same force and effect as though performed by Lessee, if at the time of such performance or payment, County shall be furnished with evidence satisfactory to the Port Department, of the interest in the leased property claimed by the person or entity tendering such performance or payment. The holder of such leasehold mortgage shall have ten (10) additional days after the date on which the Port Department may otherwise terminate this Agreement as to the defaulting Lessee to cure any default in the payment of Annual Rent or other additional sums required to be paid under this Agreement, and thirty (30) additional days after the date on which the Port Department may otherwise terminate this Agreement as to the defaulting Lessee to cure any other default hereunder. In no event shall an approved leasehold mortgagee sell, assign, transfer, convey, or otherwise dispose of its interest in this Agreement to a third party without the prior written consent of the Port Department.

The Port Department shall, from time to time, upon reasonable written request, provide a leasehold mortgagee or Lessee with an estoppel certificate stating whether Lessee is in default, whether this Agreement is in full force and effect, and whether this Agreement has been modified. Notwithstanding any consent provided by County, no Assignment shall give Lessee or its assignee, sublessee, transferee, or leasehold mortgagee any lien or encumbrance upon the fee simple ownership interest in the Premises, which is vested in County.

When giving notice to Lessee with respect to any default under the provisions of this Agreement, the Port Department shall also serve a copy of such notice upon any approved leasehold mortgagee by certified mail, return receipt requested, or any other method of delivery that can be confirmed and verified, to the leasehold mortgagee at the address set forth in the approved leasehold mortgage. It is Lessee's responsibility and the approved leasehold mortgagee's responsibility to ensure that the Port Department has both Lessee's and the approved leasehold mortgagee's correct and current mailing address.

Upon Lessee's receipt of notice of default from the Port Department, Lessee will promptly notify the approved leasehold mortgagee in writing of such occurrence and state in the written notice what action has been or will be taken by Lessee to cure the default. Lessee shall also promptly provide the Port Department with a copy of the written notice provided to the approved leasehold mortgagee.

## **ARTICLE 11. SURRENDER OF PREMISES**

11.1. Surrender and Condition. Upon the expiration or earlier termination of this Agreement, Lessee shall surrender possession of the Premises in the same condition as it was received on the first day of occupancy, less reasonable wear and tear, and all of the Premises and Improvements located thereon shall be free and clear of all liens, encumbrances, and security interests. At the time of Lessee's surrender, all personal property and Improvements (only those that are required to be removed as provided in Article 5) shall be removed. A final exit walkthrough inspection shall be conducted prior to surrender by Lessee and the Port Department to determine compliance with this provision and the Port Department's acceptance of the condition of the Premises. If Lessee fails to comply with the terms of this section, County reserves the right to perform all necessary work to bring the Premises to the required condition and Lessee shall be required to reimburse County for all reasonable expenses incurred. The provisions of this section shall survive the expiration or other termination of this Agreement.

11.2. Removal. Lessee has the right at any time during this Agreement to remove any furnishings, trade fixtures, or equipment it has installed in, on, or about the Premises, subject to the provisions of this Agreement and any lien County may have thereon for unpaid fees, charges, or other amounts payable under this Agreement, and provided that Lessee shall restore any damage to the Premises and the Premises shall be returned to County in the same condition as defined in Section 11.1. Any such property not removed by Lessee by the expiration or earlier termination of this Agreement shall become part of the Premises or, if elected by the Port Department, may be removed, stored, or sold by County, at Lessee's expense, with such obligation to pay surviving the expiration or earlier termination of this Agreement.

11.3. Failure to Surrender. If Lessee fails to surrender the Premises in the condition required by this article or fails to complete any of the obligations due under this Agreement, including the payments of Annual Rent, Lessee, from the date of the expiration or earlier termination of this Agreement until the acceptance of surrender by the Port Department as set forth in Section 11.4, shall be considered a holdover tenant under the terms set forth in Section 7.5.

11.4. Acceptance of Surrender. No agreement of surrender or to accept a surrender of the Premises under this Agreement shall be valid unless and until approved in writing by the Port Department and Lessee, provided that the Port Department's approval shall not be unreasonably withheld. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of County shall be deemed an acceptance of a surrender.

## **ARTICLE 12. ENVIRONMENTAL**

12.1. County makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or under the Premises or the improvements thereon in violation of any federal, state, or local law, rule, or regulation or in violation of any order or directives of any federal, state, or local court or entity with jurisdiction of such matter. The term "Pollutants" refers to and includes all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials, and wastes as are or become regulated under applicable local, state, or federal laws or regulations. Lessee acknowledges, represents, and warrants to County that it has made sufficient inspection of the Premises and the improvements thereon to satisfy itself as to the presence or absence of any such Pollutants. Lessee shall have no liability for any preexisting environmental impairments, liabilities, or conditions related to the Premises and the improvements thereon not caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees. Lessee shall not be liable for any migration of Pollutants and/or rise in the level of any Pollutants related to the Premises not caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees.

12.2. The discharge of any Pollutants on the Premises or in Port Everglades in violation of any federal, state, or local law, rule, or regulation, or in violation of an order or directive of any federal, state, or local court or entity is prohibited. Any Pollutant discharge by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, whether committed prior to or subsequent to the Effective Date of this Agreement, shall be, at Lessee's expense, and upon the Port Department demand, immediately contained, removed, and abated to the satisfaction of the Port Department and any court or regulatory entity having jurisdiction of the Pollutant discharge. If Lessee does not take action immediately to have such Pollutants contained, removed, and/or abated, County may undertake the removal of the Pollutant discharge; however, any such action by County shall not relieve Lessee of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Lessee or County to contain or remove Pollutants, 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 cause of the Pollutant discharge.

12.3. Lessee shall provide the Port Department with immediate notice of any and all spills, leaks, or discharges of any size whatsoever of Pollutants arising from its operations on and/or use of the Premises or in Port Everglades, and further provide the Port Department with not less than one (1) Business Day prior written notice of all curative measures, remediation efforts, and/or monitoring activities to be effectuated by Lessee, or promptly after taking any emergency measures.

12.4. If the Port Department arranges for the removal of any Pollutants in Port Everglades that were caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, the costs of such removal incurred by County shall

be paid by Lessee to County immediately upon the Port Department's written demand, with interest as is provided for under County's rules, regulations, and ordinances, including the Tariff.

12.5. Lessee shall not be liable for the discharge of any Pollutants caused by the negligence or willful misconduct of County. Nothing herein shall relieve Lessee of its general duty to cooperate with County in ascertaining the source and containing, removing, and abating any Pollutants located at the Premises. County and County's employees, contractors, and agents shall have the right at all times to enter the Premises for the purposes of the foregoing activities and/or conducting such environmental inspections, audits, testing, or sampling as County deems appropriate. In addition, Lessee hereby agrees that upon any Assignment of this Agreement or at any time during the Term, County shall have the right to have a "Phase I" audit of the Premises conducted at Lessee's expense, and if such "Phase I" audit indicates that further testing and/or studies should be conducted, to include, but not be limited to, soil samples and water samples, then County shall have the right to have such further testing and studies conducted at Lessee's expense. Lessee shall reimburse County for the cost of such testing and studies within fifteen (15) days after written demand by County.

12.6. If the Port Department arranges for the removal of Pollutants on the Premises that are not Lessee's responsibility to correct, and if County's remediation activities prevent Lessee from using the Premises for its intended purposes, then from the date that the use of any portion of the Premises for its intended purposes is precluded and until the date said portion again becomes available for Lessee's use, then a prorated portion of the Annual Rent payments due shall be abated based on the portion of the Premises rendered unusable. In no event shall Lessee be entitled to claim or seek from County any amount on account of lost profits, lost rents, or other direct or consequential damages as a result of County's remediation activities.

12.7. Lessee shall, as required by applicable laws, provide the relevant regulatory authorities with notice of any and all spills, leaks, or discharges of Pollutants on the Premises or within Port Everglades, and have an updated contingency plan in effect for such spills, leaks, or discharges.

12.8. The provisions of this article shall survive the expiration or earlier termination of this Agreement.

### **ARTICLE 13. OTHER PROVISIONS**

#### **13.1. Right to Enter Premises.**

13.1.1. County, by its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times to enter upon the Premises to inspect, make inquiry, and ascertain whether Lessee is complying with the terms of this Agreement, and to perform or conduct any act or activity that County may be obligated or have the right to do under this Agreement or otherwise.

13.1.2. Without limiting the generality of the foregoing, County, by its employees, agents, representatives, and contractors, may enter upon the Premises at all reasonable times to:

(i) make any installations, repairs, replacements, or alterations relating to existing and future utility, mechanical, electrical, HVAC, plumbing, roofing, or other systems in, on, or under the Premises as may be deemed necessary or advisable by County; or (ii) use the Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration, or new construction, County shall not unreasonably interfere with the use and occupancy of the Premises by Lessee.

13.1.3. If any of Lessee's personal property obstructs the access of County or County's officers, employees, agents, or contractors to any of the existing or future utility, mechanical, electrical, HVAC, plumbing, roofing, or other systems in, on, or under the Premises, and thus interferes with the inspection, maintenance, or repair of any such system, Lessee shall move such property, as directed by the Port Department, in order that access may be had to the system or part thereof for its inspection, maintenance, or repair, and if Lessee fails to so remove such property after direction from the Port Department, then the Port Department may move it and Lessee shall pay the cost of such moving within ten (10) days after the Port Department sends written demand therefor.

13.1.4. If at any time during the Term hereof, it is necessary for the Port Department to enter the Premises for the purposes of constructing utility or pipeline facilities or making repairs or other needed improvements, Lessee agrees that the Port Department and its contractors may enter the Premises for such purposes, during reasonable hours and under conditions that will not unreasonably interfere with Lessee's use of the Premises.

13.1.5. The exercise of any or all of the foregoing rights by County shall not be construed to be an eviction of Lessee nor be grounds for any abatement of rental, nor any claim or demand for damages, consequential or otherwise, against County.

13.2. Ingress and Egress. Lessee and Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, and invitees, subject to the terms of this Agreement, shall have the right of ingress and egress via appropriate public ways, to be used in common with others having rights of passage within Port Everglades; provided, however, that the Port Department may, from time to time, substitute other suitable means (considering Lessee's business operations) of ingress and egress so long as an alternate adequate means of ingress and egress is available. The Port Department may, at any time, temporarily or permanently close, or request the closing of any such street, roadway, and/or other area at Port Everglades presently or hereafter used as such so long as an alternate adequate means of ingress and egress is made available to the Premises (considering Lessee's business operations). Lessee releases and discharges County of and from any and all claims, demands, or causes of action that Lessee may now or at any time hereafter have against County arising or alleged to arise out of the temporary or permanent closing of any street, roadway, or other area used as such, whether within or outside Port Everglades, provided that County makes available to the Premises an adequate means of ingress and egress (considering Lessee's business operations).

13.3. Inspection of Documents. Lessee shall provide the Port Department the right and ability to inspect all documents relating in any way to the Premises and all activities thereon, including, but not limited to, writings regarding environmental issues and remediation efforts (such as manifests evidencing proper transportation and disposal of Pollutants, site assessments, sampling, and test results, etc.).

13.4. Tariff. Except as otherwise expressly provided herein, Lessee, in its use of County-owned property and facilities and its utilization of services at Port Everglades, shall comply with and be governed by the Tariff, and pay, in addition to the required payments under this Agreement, all charges and rates in accordance with the provisions of the Tariff.

13.5. Animals. Lessee shall not allow any animal(s) or pet(s) of any kind to be kept or harbored in or about the Premises without the prior written permission of the Port Department.

13.6. Signage. Lessee will not place, suffer to be placed, or maintain on the Premises any sign, awning, canopy, or advertising matter without prior written consent of the Port Department, which consent shall not be unreasonably withheld. If such consent is granted by the Port Department, Lessee shall always maintain such item(s) in good condition and install same pursuant to the Port Everglades Development District Zoning Classification.

13.7. Security. Lessee, at its sole cost, shall be responsible for security on the Premises and all improvements thereon, and shall take and require others to take, as required, whatever legal precautions as are necessary to protect the Premises and all improvements thereon, and all persons and property thereon. Lessee acknowledges that security measures at Port Everglades may be increased by County and that such efforts will likely impact the Premises. In this regard, Lessee agrees to cooperate with County's efforts to increase security and agrees to comply with all security related laws, rules, and regulations (whether imposed by the United States Customs and Border Protection, the United States Coast Guard, state of Florida, or County). Lessee, at its sole cost, shall be responsible for complying with all security-related measures that impact the Premises, Lessee, or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees. Any increased security-related measures imposed by County on Lessee hereunder shall be uniformly imposed by County on similarly situated parties at Port Everglades.

13.8. Fines. If as a result of an intentional or negligent act or omission of Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, County incurs any fines and/or penalties, or any expense in enforcing the Port Everglades Security Program or the rules and regulations of other applicable security agencies, then Lessee agrees to pay and/or reimburse to County all such fines, penalties, costs, and expenses, including all costs of administrative proceedings, court costs, and reasonable attorney's fees incurred by County in enforcing this provision. Lessee further agrees to rectify any security deficiency caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, or other deficiency as may be determined by the Port Department. If Lessee fails to remedy any such deficiency, the Port

Department may do so at the cost and expense of Lessee. County reserves the right to take whatever action is necessary to rectify any such security deficiency or other compliance deficiency. The provisions hereof shall survive the expiration or any other termination of this Agreement.

13.9. Inspections. Lessee acknowledges that all persons, vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave Port Everglades. Lessee acknowledges and understands that the inspection requirements are for the protection of users of the Port and are intended to reduce incidents of cargo tampering, thefts, and other unlawful activities at the Port. For this reason, Lessee agrees that persons who will not consent to being inspected and searched shall not be employed by Lessee or by Lessee's subcontractor(s) in any position requiring access to the Port. Lessee shall include this provision in its contracts with its subcontractors, agents, employees, and business invitees.

13.10. Risk of Loss. The risk of loss of or damage to personal property, including, but not limited to, cargo, commodities, and equipment, that has been stored at or moved on or near the Premises shall be borne solely by Lessee or the owner of such property. Lessee hereby waives all claims and demands against County and County's employees for any losses (including on account of lost or anticipated profits), costs, expenses, or other damages, including, but not limited to, direct, indirect, consequential, or otherwise, caused by injury to or loss of personal property on or near the Premises.

13.11. Licenses. Lessee shall maintain in current status all federal, state, county, and local licenses, business tax receipts, and permits required for the operation of the business conducted by Lessee.

13.12. Parking. Lessee's use of parking spaces in Port Everglades shall be subject to and in accordance with County's vehicle parking regulations set forth in the Tariff. Lessee shall ensure that its officers, employees, and agents park only in parking spaces specifically assigned to Lessee. Vehicles parked in parking spaces not specifically assigned to Lessee may be towed at the vehicle owner's expense.

13.13. Uncontrollable Forces. Neither County nor Lessee shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming Party could not avoid. The term "Uncontrollable Forces" shall mean any event that results in the prevention or delay of performance by a Party of its obligations under this Agreement and that is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to, fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Any delay or failure to perform on the part of Lessee caused by Uncontrollable Forces shall not be recognized unless Lessee notifies the Port Department in writing within ten (10) days after the Uncontrollable Forces event. Neither economic impracticability nor inability of Lessee to perform in whole or in part for economic reasons shall constitute an Uncontrollable Forces event.

13.14. Nondiscrimination. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. By execution of this Agreement, Lessee represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement in accordance with the provisions of Article 7 herein.

13.15. Damage to Port Facilities. Lessee shall be responsible for and repair any and all damage to the Port caused by the negligence of Lessee. If Lessee fails to make the necessary repairs in a timely manner as determined by the Port Department, then the Port Department may, at their option, cause such repairs to be completed and Lessee shall reimburse County for the costs and expenses incurred in such repair, plus an administrative fee as permissible under the Broward County Administrative Code.

13.16. Development and Expansion of Port. County shall have the right to develop, maintain, and operate the Port as it deems advisable and desirable in accordance with such appropriate governmental authority and regulation as may be applicable, and County shall have the right to make such agreements as County deems necessary or advisable in connection with federal and state funding of Port improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Port, Lessee shall provide any and all reasonably requested cooperation and support, including, without limitation, supporting County's efforts to obtain any such approvals and executing any documents or instruments reasonably requested by County. Lessee shall not be required to bear any additional expense and shall not be deemed an agent of County.

13.17. Cooperation with County. Lessee acknowledges that County will be seeking regulatory approvals ("Regulatory Approvals") consistent with its Airport Master Plan and subsequent updates (collectively, "Master Plan") and Federal Administrative Administration Record of Decision and subsequent updates (collectively, "ROD"), and Part 150 Study and subsequent updates (collectively, "Part 150 Study"), and the implementation thereof, which may include the following: (1) amendment of development agreements and orders; (2) agreements with the State of Florida and other agencies; (3) land use and zoning amendments; (4) preparation of environmental assessments and environmental impact statements; (5) such permitting as may be required by federal, state, county, or local regulations; and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan, the ROD, or the Part 150 Study. Lessee shall cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of Effective Date of this Agreement, Lessee shall (i) support County's efforts to obtain the Regulatory Approvals; and (ii) execute any documents(s) or instrument(s) reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Lessee shall not be required to bear any expense in connection therewith and Lessee shall not be deemed an agent of the County.



13.18. Easements. County reserves the right to maintain such easements and right of way agreements on the Premises as may now or in the future be determined necessary to serve the needs of Port Everglades, and Lessee agrees to take the Premises subject to such easement and agreement requirements. Such easements and agreements will be used for, among other things, ingress and egress for other Port users, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles. However, it is understood and agreed that County will restore any Improvements that Lessee has made on the Premises, if such Improvements are damaged by any installation made by County. Furthermore, the Port Department shall take reasonable steps to ensure that any such installation work be the least disruptive to Lessee's operations.

13.19. Polystyrene Food Service Articles. Lessee shall comply with the prohibition on the use or sale of expanded polystyrene products (e.g., Styrofoam) or single-use plastic beverage straws or stirrers on County property set forth in Section 27.173, Broward County Administrative Code.

13.20. Prohibited Telecommunications Equipment. Lessee represents and certifies that Lessee and all of its subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Lessee represents and certifies that Lessee and all of its subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

13.21. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

13.22. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees to the extent required by Section 768.28, Florida Statutes.

13.23. Agent for Service of Process. If Lessee is not a resident of the State of Florida, is an association or partnership without a member or partner resident of said State, or is a foreign

corporation, then Lessee hereby designates the Secretary of State of the State of Florida as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and service shall be made as provided by the laws of the State of Florida for service upon a nonresident who has designated the Secretary of State as agent for service. If for any reason service of such process is not possible, as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to Lessee at the address set forth in this Agreement. Any such service out of this State shall constitute valid service upon Lessee as of the date of mailing. Lessee is amenable to and agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protests thereto.

13.24. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement, or acceptance of any Annual Rent or any partial performance by Lessee, shall not be deemed a waiver of any provision of this Agreement or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

13.25. Time of Essence. Time is of the essence with respect to this Agreement and shall apply to all terms and conditions contained in this Agreement.

13.26. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

13.27. Independent Contractor. Lessee is an independent contractor under this Agreement. In providing services under this Agreement, neither Lessee nor its agents shall act as officers, employees, or agents of County. Lessee shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

13.28. Third-Party Beneficiaries. Neither Lessee nor County 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 right or claim against either of them based upon this Agreement.

13.29. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

13.30. Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

13.31. Incorporation of Required Provisions. The Parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

13.32. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The following Exhibits are incorporated into and made a part of this Agreement:

<b>Exhibit A</b>	<b>Premises</b>
<b>Exhibit B</b>	<b>Statement of Compliance</b>
<b>Exhibit C</b>	<b>Minimum Insurance Coverage</b>

13.33. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by authorized signatories of both the Board and Lessee.

13.34. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. No deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

13.35. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa unless the context otherwise requires. Terms such as "herein" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

13.36. Survival. Upon termination or expiration of this Agreement, Lessee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation which accrued but has not been satisfied under any prior agreements between the Parties shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

13.37. No Set Off. Lessee acknowledges that, through the Effective Date, it has no claims against County with respect to any of the operations of Lessee at the Port or any of the matters covered by this Agreement or any other agreement it may have with County. Lessee further acknowledges that it has no right of set off or counterclaims against any of the amounts payable by Lessee to County under this Agreement or any other agreement it may have with County.

13.38. Waiver of Claims. Lessee hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, without limitation, any loss of anticipated profits caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; (c) any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same or any part thereof from being carried out; or (d) any change in the operation or configuration of, or any change in procedures governing the use of the Port.

13.39. Non-Liability of Government Representatives. No commissioner, director, officer, agent, or employee of County shall be charged personally or held contractually liable under any term or provision of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

13.40. No Remedy Exclusive. No remedy conferred in this Agreement upon or reserved to County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or now or hereafter existing at law or in equity.

13.41. Condemnation. If at any time during the Term, the power of eminent domain shall be exercised or threatened whether by condemnation proceeding or threat or imminence thereof (a "Taking") of the entirety of the Premises or of substantially all of the Premises so as to render the Premises untenable shall occur, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking. For purposes of this Agreement, the date of Taking shall be the earlier of the date upon which actual possession of the Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority, or the date in which title vests in such lawful power or authority. The rent required to be paid by Lessee shall be paid up to the date of such Taking. Lessee shall in all respects keep, observe, and perform all the terms and conditions of this Agreement up to the date of such Taking.

County agrees to promptly notify Lessee of any eminent domain proceeding, and Lessee, at its sole cost and expense, will be entitled to join such proceeding and to defend Lessee's interest in the Premises affected by such proceeding, and, to the extent permitted by law, to be awarded damages attributable to the value of Lessee's unexpired leasehold estate in the Premises. If at any time during the Term a Taking of less than the whole of the Premises shall occur, rent shall thereafter be reduced in proportion to the reduction in the rentable area of the Premises.

Termination of this Agreement by County shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement, or any other facts or circumstances arising out of or in connection with this Agreement.

13.42. Notices. Unless otherwise stated herein, for notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail to the addresses listed below, and shall be effective upon mailing. The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR BROWARD COUNTY:

Chief Executive/Port Director  
Port Everglades Department  
1850 Eller Drive, Suite 604  
Fort Lauderdale, Florida 33316  
Email address: jdaniels@broward.org

FOR LESSEE:

Todd M. Cannon, Vice President  
South Florida Materials Corp.  
101 Sansburys Way  
West Palm Beach, Florida 33411  
Email address: todd.cannon@vecenergy.com

13.43. Compliance with Laws. Lessee and Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, and invitees shall comply with all present and future applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including any governing the operation, maintenance, and use of the Port.

13.44. Public Entity Crime Act. Lessee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Lessee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Lessee has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Lessee under this Agreement.

13.45. Scrutinized Companies List. The Agreement may also be terminated for cause if Lessee is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if Lessee provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

13.46. Police/Regulatory Powers. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any Improvements thereon, or any operations at the Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules, and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing in this Agreement shall be considered zoning by contract.

13.47. Visual Artists' Rights Act. With respect to construction or installation of any Improvements at the Premises and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 USC §§ 106A and 113 (the "Act"), Lessee shall not (i) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises; or (ii) permit the installation or incorporation of any work of art in or at the Premises without the prior written approval of County. Lessee shall provide such reasonable documentation as County may request in connection with any request for such approval and the approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to County.

13.48. Contingency Fee. Lessee represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Lessee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Lessee. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Lessee under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

13.49. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Lessee certifies that it has and will maintain a drug-free workplace program throughout the Term.

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

13.51. Florida Clean Indoor Air Act. Pursuant to Chapter 386, Florida Statutes, and Chapter 18.38, Broward County Administrative Code, Lessee acknowledges that the Premises is designated as a "No Smoking" facility. Furthermore, Lessee agrees to prohibit smoking by employees, visitors, agents, and invitees except in posted designated areas as defined by Florida law.

13.52. Port Department Authority. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Port Department may act on behalf of County under this Agreement.

13.53. Use of County Name or Logo. Lessee shall not use County's name or logo in marketing or publicity materials without prior written consent from the Port Director.

13.54. No Recordation of Agreement. Lessee shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida.

13.55. Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

13.56. Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

13.57. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2022, and SOUTH FLORIDA MATERIALS CORP., signing by and through its Chief Operating Officer \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2022

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Port Everglades Department  
1850 Eller Drive, Suite 302  
Fort Lauderdale, Florida 33316  
Telephone: (954) 357-7600

CARLOS A.  
RODRIGUEZ-  
By CABARROCAS  
Digitally signed by CARLOS A.  
RODRIGUEZ-CABARROCAS  
Date: 2022.08.23 16:44:42  
-04'00'  
Carlos Rodriguez-Cabarrocas (Date)  
Senior/Assistant County Attorney

CRC/dh  
South Florida Materials Lease Agreement 8-23  
08/23/22



**LEASE AGREEMENT BETWEEN BROWARD COUNTY AND  
SOUTH FLORIDA MATERIALS CORP.**

LESSEE

SOUTH FLORIDA MATERIALS CORP.

By: Todd Cannon  
Digitally signed by Todd Cannon  
Date: 2022.08.23 15:35:32 -04'00'  
Authorized Signer

Todd Cannon - COO  
Print Name and Title

23 day of August, 2022

FOR: SOUTH FLORIDA MATERIALS CORP., INC.

# SKETCH AND DESCRIPTION SOUTH FLORIDA MATERIALS LICENSED AREAS "TURN LANE"

## LEGAL DESCRIPTION:

PORTIONS OF TRACT E, PORT EVERGLADES SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 26, PAGE 6, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT "A", CHEVRON ASPHALT PLANT SITE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 143, PAGE 13 OF SAID PUBLIC RECORDS; THENCE NORTH 87°56'32" EAST ALONG THE SOUTH BOUNDARY OF SAID TRACT "A", A DISTANCE OF 30.63 FEET TO THE POINT OF BEGINNING #1; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE NORTH 87°56'32" EAST, A DISTANCE OF 13.00 FEET TO A POINT HEREINAFTER KNOWN AS REFERENCE POINT #1; THENCE SOUTH 02°01'53" EAST, A DISTANCE OF 37.33 FEET; THENCE SOUTH 88°34'58" WEST ALONG THE NORTH EDGE OF PAVEMENT FOR S.E. 26th STREET, A DISTANCE OF 13.01 FEET; THENCE NORTH 02°02'50" WEST, A DISTANCE OF 36.55 FEET TO THE POINT OF BEGINNING #1.

SAID LANDS SITUATE IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA. CONTAINING 480 SQUARE FEET OR 0.011 ACRES MORE OR LESS.

TOGETHER WITH:

COMMENCE AT SAID REFERENCE POINT #1; THENCE NORTH 87°56'32" EAST ALONG SAID SOUTH BOUNDARY, A DISTANCE OF 101.99 FEET TO THE POINT OF BEGINNING #2; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE NORTH 87°56'32" EAST, A DISTANCE OF 55.10 FEET; THENCE SOUTH 47°42'43" EAST, A DISTANCE OF 10.86 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 40.00 FEET, THROUGH A CENTRAL ANGLE OF 44°20'45", FOR AN ARC DISTANCE OF 30.96 FEET TO A POINT OF TANGENCY; THENCE NORTH 87°56'32" EAST ALONG A LINE PARALLEL WITH SAID SOUTH BOUNDARY, A DISTANCE OF 82.84 FEET; THENCE SOUTH 82°14'23" EAST, A DISTANCE OF 109.93 FEET; THENCE SOUTH 87°52'11" WEST ALONG SAID NORTH EDGE OF PAVEMENT, A DISTANCE OF 243.04 FEET; THENCE NORTH 47°43'59" WEST, A DISTANCE OF 54.44 FEET TO THE POINT OF BEGINNING #2.

SAID LANDS SITUATE IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA. CONTAINING 4,843 SQUARE FEET OR 0.111 ACRES MORE OR LESS.

## NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING AND ARE REFERENCED TO THE SOUTH BOUNDARY OF TRACT "A", CHEVRON ASPHALT PLANT SITE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 143, PAGE 13, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, WHICH IS ASSUMED TO BEAR NORTH 87°56'35" EAST.
2. THIS SKETCH AND DESCRIPTION CONSISTS OF 2 SHEETS AND EACH SHEET SHALL NOT BE CONSIDERED FULL, VALID AND COMPLETE UNLESS ATTACHED TO THE OTHER.
3. THE EXISTING 20' PHILLIPS PIPE LINE CO. EASEMENT AS SHOWN ON SHEET 2 OF 2 IS REFERENCED TO THE PHILLIPS PIPE LINE COMPANY PIPING LAYOUT PLAN FOR PORT EVERGLADES, DRAWING NO. LD-557, PAGE P23-0, DATED JUNE 10, 1955, AS DESCRIBED IN THE GRANT OF PIPE LINE EASEMENT BETWEEN BROWARD COUNTY PORT AUTHORITY AND PHILLIPS PIPE LINE COMPANY DATED SEPTEMBER 7, 1955 (NO RECORDING INFORMATION AVAILABLE) BOTH AS SUPPLIED TO CRAVEN THOMPSON & ASSOCIATES, INC. BY THE CLIENT.

## CERTIFICATE:

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION AND OTHER PERTINENT DATA SHOWN HEREON, OF THE ABOVE DESCRIBED PROPERTY, CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 5J-17, (FLORIDA ADMINISTRATIVE CODE) AS ADOPTED BY DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES AND THAT SAID SURVEY IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

CRAVEN THOMPSON & ASSOCIATES, INC.  
LICENSED BUSINESS NUMBER #271

## LEGEND

B.C.R. BROWARD COUNTY RECORDS  
O.R.B. OFFICIAL RECORD BOOK  
P.B. PLAT BOOK  
P.G. PAGE  
R/W RIGHT-OF-WAY  
U.E. UTILITY EASEMENT

Raymond  
Young

Digitally signed by Raymond

Young

Date: 2022.07.06 09:13:48

-04'00'

RAYMOND YOUNG

PROFESSIONAL SURVEYOR AND MAPPER NO 5799  
STATE OF FLORIDA

THIS SKETCH AND DESCRIPTION OR COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR A UNIQUE ELECTRONIC SIGNATURE OF A FLORIDA LICENSED PROFESSIONAL SURVEYOR AND MAPPER UNDER CHAPTER RULES 5J-17.061 & 5J-17.062 FLORIDA ADMINISTRATIVE CODE.

R:\SURVEY\2017\17-0022-002-02\_ VECENERGY\DRAWINGS\QUEING LANE PARCEL

17-0022-002-002-SOUTH QUEING LANE AND PARKING DRIVE 2 REVISED

THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

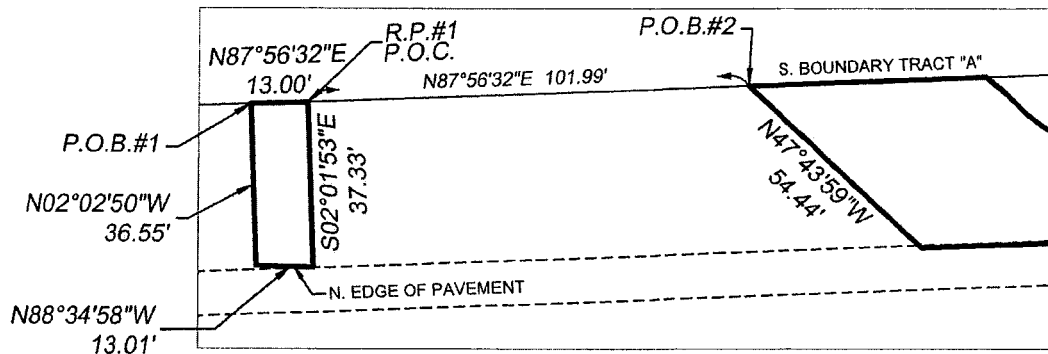
The undersigned and CRAVEN THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification. Lands shown hereon were not abstracted for right-of-way and/or easements of record.

UPDATES and/or REVISIONS	DATE	BY	CK'D
1. REVISE BOUNDARY	10/20/21	RY	TB
2. REVISE BOUNDARY PER CLIENT	12/16/21	RY	TB
3. REVISE DESCRIPTION ACREAGE	06/28/22	RY	RY
4. REVISE PER COMMENT	07/06/22	RY	RY

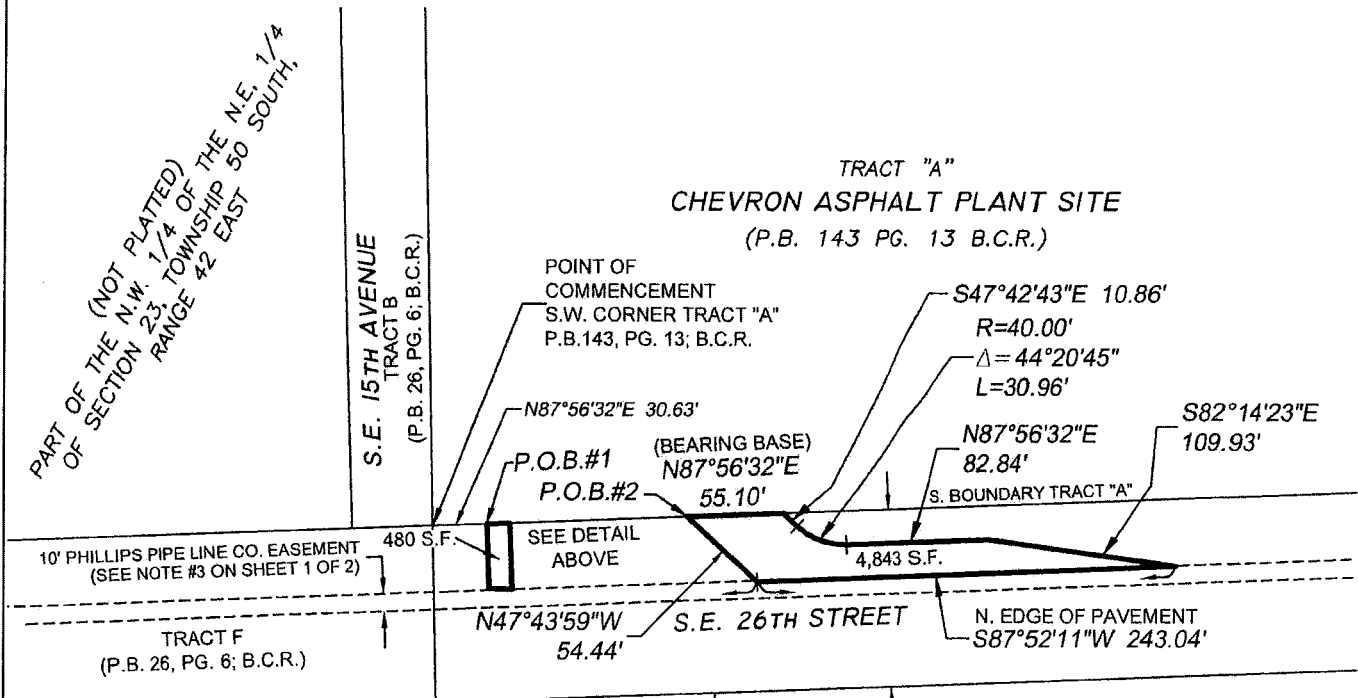
**CRAVEN • THOMPSON & ASSOCIATES, INC.**  
ENGINEERS • PLANNERS • SURVEYOR'S  
3563 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33309 FAX: (954) 739-8409 TEL.: (954) 739-8400  
FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271  
MATERIAL SHOWN HEREON IS THE PROPERTY OF CRAVEN-THOMPSON & ASSOCIATES, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. COPYRIGHT (C) 2022

JOB NO.: 17-0022-002-02	SHEET 1 OF 2 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
CHECKED BY: MB	DATED: 12-23-20

# SOUTH FLORIDA MATERIALS LICENSED AREAS "TURN LANE"



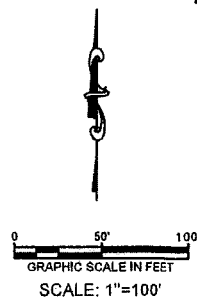
**DETAIL**  
(SCALE: 1"=40')



(NOT PLATTED)  
PART OF THE N.W. 1/4 OF THE N.E. 1/4  
OF SECTION 23, TOWNSHIP 50 SOUTH,  
RANGE 42 EAST

TRACT E  
PORT EVERGLADES  
SUBDIVISION NO. 1  
(P.B. 26, PG. 6; B.C.R.)

TRACT 14  
PORT EVERGLADES  
SUBDIVISION NO. 1  
(P.B. 26 PG. 6 B.C.R.)



R: \SURVEY\2017\17-0022-002-02\_ VECENERGY\DRAWINGS\QUEING LANE PARCEL

**CRAVEN • THOMPSON & ASSOCIATES, INC.**  
ENGINEERS • PLANNERS • SURVEYOR'S  
3563 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33309 FAX: (954) 739-6409 TEL.: (954) 739-6400  
FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271  
MATERIAL SHOWN HEREON IS THE PROPERTY OF CRAVEN-THOMPSON & ASSOCIATES, INC. AND SHALL  
NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. COPYRIGHT (C) 2022

JOB NO.: 17-0022-002-02	SHEET 2 OF 2 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
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**EXHIBIT B – STATEMENT OF COMPLIANCE**

No. \_\_\_\_\_

Agreement No. \_\_\_\_\_ Project Title \_\_\_\_\_

The undersigned Lessee hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_  
Lessee

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF            )  
                              )  
COUNTY OF        )

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

State of Florida at Large (Seal)

My commission expires:

Exhibit C  
INSURANCE REQUIREMENTS

Exhibit 1  
Page 37 of 37

Land Lease Agreement: South Florida Materials Corp Inc.  
Agency: Port Everglades Business Administration

		MINIMUM REQUIREMENTS			
			Each Occurrence	Aggregate	
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>					
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$1,000,000	
<input checked="" type="checkbox"/> <b>POLLUTION / ENVIRONMENTAL LIABILITY</b>			If claims-made form:	\$5,000,000	
			Extended Reporting Period of:	2 year	
			*Maximum Deductible:	\$100,000	
<input type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b> All engineering, surveying and design professionals.			If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):		
			*Maximum Deductible:		
<b>Description of Operations:</b> "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Lessee insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) must be declared to and approved by County and may require proof of financial ability to meet losses. Vendor is responsible for all coverage deductibles unless otherwise specified in the agreement.					

Norma  
Dmytriw

Digitally signed by  
Norma Dmytriw  
Date: 2021.02.17  
08:35:09 -05'00'