

OPERATING AND MANAGEMENT AGREEMENT CONCESSIONS AT SOUTH BEACH CITY PARK

This Operating and Management Agreement (“Agreement”) is made and entered into on ____ day of _____, 2025 between, **BEACHERIA, LLC**, a Florida Limited Liability Company (“OPERATOR” or “CONTRACTOR”) and the **CITY OF HALLANDALE BEACH**, a Florida municipal corporation (“CITY”).

Recitals

- A. CITY is the owner of approximately 3.5 acres of beachfront property known as South City Beach Park, located in the City of Hallandale Beach, Florida (“PROPERTY”).
- B. CITY requires the services of an operator to manage and operate a concessions business within the CITY’s PROPERTY which provides food, beverages and approved merchandise to patrons of the Park from the northern structure within the Park (“CONCESSION”).
- C. The City Commission has approved this agreement pursuant to Resolution # _____.

Agreement

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

- 1. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein:
 - 1.1. **Exhibit A** - Site Plan for the PROPERTY
 - 1.2. **Exhibit B** – Repair and Maintenance Items
 - 1.3. **Exhibit C**– Noise Ordinance
 - 1.4. **Exhibit D** – Polystyrene Policy
 - 1.5. **Exhibit E** – Straw Ordinance
- 2. **Defined Terms.** Terms which are defined in this Agreement are given the meaning provided herein upon the first use of such term.
- 3. CITY hereby retains OPERATOR as the sole and exclusive party to manage, operate, and maintain the CONCESSION in the area indicated on the Site Plan attached as **Exhibit A** (“CONCESSION AREA”) for the term of the Agreement. The CONCESSION activities shall be performed in the manner indicated herein and shall be limited to the indicated area and shall not extend to other areas of the PROPERTY. OPERATOR hereby accepts all of the rights, obligations and duties of OPERATOR set forth in the Agreement.
- 4. **Term of Agreement.** This Agreement will commence upon the first day of the month following the date it is signed by CITY and OPERATOR (“Effective Date”) and will have a term of 5 years (the “TERM”) with two five (5) year renewal terms that may be approved at the discretion of the CITY Manager.

5. **Public Park.** OPERATOR acknowledges that the PROPERTY, including the CONCESSION AREA, is a public park, and expressly agrees that the PROPERTY, and all improvements constructed upon or operated upon the PROPERTY, will be open to and accessible by all members of the public at all times during operating hours. No portions of the PROPERTY will be designated for exclusive use by any third parties.

5.1. **No Charges for Certain Uses.** OPERATOR may not impose any charges for use by the public of the restrooms, changing rooms, or the park or beach in general.

5.2. **City's Right to Use.** CITY retains the right to the PROPERTY in any manner that does not interfere with this agreement; provided, however, CITY shall not authorize third party food or beverage sales within the Park or otherwise materially interfere with OPERATOR's exclusive right to provide food and beverages (including alcoholic beverages, subject to law) within the CONCESSION AREA and the Park.

5.3. **No Leasehold.** OPERATOR acknowledges that this Agreement is not a lease, that OPERATOR is not a lessee, that no part of the PROPERTY is leased, and that OPERATOR has not acquired any tenancy or proprietary interests in the PROPERTY. The right to operate the CONCESSION as a licensee is limited to the terms herein and effective only as long as the management and operations comply with the terms of this Agreement.

5.4. OPERATOR agrees that the assets of CITY shall not be pledged, liened, encumbered or otherwise alienated or assigned for any purpose.

6. **Compensation.**

OPERATOR accepts as compensation for the services provided pursuant to this Agreement the profits, if any, generated from operation of the CONCESSION after payment of an Annual Fee to the CITY, as follows:

6.1. **Annual Fee.**

6.1.1. **Initial Term Years 1:** OPERATOR will pay the CITY an Annual Fee of \$100,000 payable in an initial payment of \$8,337 within 15 days of the effective date of this Agreement and eleven (11) monthly installments of \$8,333.

6.1.2. **Initial Term Years 2-5:** The Annual Fee shall increase each year on October 1 based on the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), Miami-Fort Lauderdale-West Palm Beach, FL (Not Seasonally Adjusted), published by the U.S. Bureau of Labor Statistics, comparing the August index of the then-current calendar year to the August index of the prior calendar year, with a minimum annual increase of 2%.

6.1.3. **Year 6-10 and 11-15 (Renewal Terms):** The Annual Fee will be negotiated at the time of Renewal.

6.2 **Monthly Payments.** OPERATOR shall pay the Annual Fee to CITY on or before the first day of each month during the Term. Monthly payments will be paid to CITY

at the address set forth for notice in this Agreement, unless the CITY instructs OPERATOR in writing to send the monthly payments to an alternate address.

7. **Concession Operation.**

- 7.1. **Full-Service Food Concession.** The CONCESSION to be operated by OPERATOR will be a full-service CONCESSION, serving food, beverage, and alcoholic beverages.
- 7.2. **Sale of Articles.** OPERATOR shall be entitled to display and sell merchandise commonly used at beaches or parks including, but not limited to, sunscreen, hats, apparel, beach balls, beach toys, goggles, masks, and towels. The merchandise sold by OPERATOR may contain the name and logo of OPERATOR and its parent company, as well as the name of the CITY and its logo. Upon notification by the CITY, OPERATOR shall not continue to sell or display any merchandise which the CITY, in its sole discretion, finds objectionable.
- 7.3. **Minimum Operating Hours.** The CONCESSION shall be open for business at minimum 9 am to dusk every day of the year when the South City Beach Park is open, unless prohibited by weather. The OPERATOR may offer reduced hours for national holidays including Easter Sunday, Thanksgiving Day, and Christmas Day. The CITY may authorize, upon OPERATOR's request, or require, upon CITY's written notice to OPERATOR, additional periods of closing.
- 7.4. **Alcoholic Beverages.** OPERATOR may elect to serve Alcoholic Beverages, subject to the following:
 - 7.4.1 OPERATOR is responsible for obtaining all required licenses for the sale of alcohol in the CONCESSION and will adhere to all Governmental Requirements applicable to the sale and consumption of alcohol.
 - 7.4.2 OPERATOR will ensure all alcohol is consumed within the CONCESSION AREA. OPERATOR acknowledges that alcohol is prohibited on the beach and OPERATOR will take reasonable efforts to ensure customers do not take their alcoholic beverage purchase beyond the designated area.
 - 7.4.3 If patrons of the OPERATOR are observed consuming alcohol outside of the designated area, the CITY shall notify the OPERATOR, in writing, of the observed violation. The CITY reserves the right to withdraw OPERATOR's authorization to sell alcoholic beverages pursuant to this agreement after notifying the OPERATOR no less than three (3) times in a twelve (12) month period of observed violations. If notified that the CITY is withdrawing the authorization to sell alcoholic beverages, the OPERATOR will immediately cease said activity. The continued sale of alcohol after receipt of the aforementioned notice shall not be curable and shall constitute grounds for immediate termination of the agreement.
- 7.5. **Quality Service.** The OPERATOR shall provide a professional operation that is safe and customer-oriented with prompt service, complaint resolution, effective

employee performance and training and timely initiation and completion of all work in a manner that will provide quality service for the public.

- 7.6. **Menu.** OPERATOR shall provide a diverse menu offering with diverse pricing, including affordably priced options. OPERATOR shall be entitled to promote and hold special menu days including but not limited to barbeques, and theme nights. All items sold shall be of high quality, and the services provided shall be rendered courteously and efficiently. CITY reserves the right to prohibit the sale of any item that it reasonably deems objectionable, and CITY shall have the right to require the improvement of the quality of either the items or the services rendered.
- 7.7. **No Discrimination.** OPERATOR shall ensure service is provided to all members of the community who seek it regardless of race, color, creed, sex, sexual orientation, gender identity, national origin or economic status.
- 7.8. OPERATOR shall provide all necessary equipment for the providing of services at the CONCESSION which shall include furniture for customers.
- 7.9. OPERATOR shall maintain all licenses and certifications required to operate CONCESSION throughout the contract TERM.
8. **Administration.** OPERATOR shall administer the CONCESSION, preserving order and providing for safety and security of the facilities and preventing damage to the public or facilities by CONCESSION guests or customers.
 - 8.1. During a declared State of Emergency, the OPERATOR will secure the CONCESSION AREA in accordance with all instructions from the CITY.
9. **Promotions and Marketing.** OPERATOR shall be responsible for all Promotional and Marketing efforts on behalf of the CONCESSION subject to CITY approval. Approvals shall not be unreasonably withheld, conditioned, or delayed.
10. **Maintenance and Repair.** OPERATOR shall notify the CITY of any unsafe conditions and ensure proper maintenance is completed before the CONCESSION is open to the public.
 - 10.1. **Maintenance Costs.** OPERATOR will be responsible for the payment of all costs and expenses associated with the operation and maintenance of the CONCESSION and the CONCESSION AREA.
 - 10.2. **Maintenance Standards.**
 - 10.2.1. OPERATOR shall, at its sole cost and expense, keep, maintain and properly repair the CONCESSION AREA including without limitation all spaces, equipment, furniture and fixtures, in first class, safe, clean, neat, sanitary and lawful order, condition and repair, free of pests and vermin, excepting only reasonable wear and tear that does not negatively affect or deteriorate the appearance, aesthetics, or structural integrity of the PROPERTY.
 - 10.2.2. OPERATOR will provide janitorial, cleaning supplies, and all materials and supplies necessary for the successful operation of the CONCESSION.

- 10.2.3. OPERATOR shall be responsible for the payment of all costs and expenses associated with the operation, daily maintenance and repair, and security of the CONCESSION. See Exhibit B for a non-exhaustive list of repair and maintenance items.
- 10.2.4. OPERATOR shall provide regular, daily, inspection of CONCESSION.
- 10.2.5. OPERATOR shall provide routine custodial/ janitorial service and care of CONCESSION and CONCESSION AREA.
- 10.2.6. OPERATOR shall keep the CONCESSION and CONCESSION AREA in a neat and clean condition.
- 10.2.7. OPERATOR must remove litter and all other debris on a daily basis.
 - 10.2.7.1. OPERATOR acknowledges and agrees that it is very important to the CITY and its residents that the area remains free of uncontained or piled up garbage and trash. No garbage may be stored during business hours within the sight of the public.
- 10.3 **Vandalism.** The CITY shall be responsible for repairs due to vandalism on the exterior of the building in CONCESSION AREA. The OPERATOR shall be responsible for repairs due to vandalism on the interior of the building.
- 10.4 **Extermination Services.** OPERATOR shall provide regular extermination services of the CONCESSION AREA to ensure a pest free area.
- 11. **Staffing**
 - 11.1. OPERATOR shall provide proper supervision of CONCESSION at all times of operation.
 - 11.2. OPERATOR shall provide sufficient competent and professional employees, agents, subcontractors and volunteers (STAFF), of good moral character to ensure a safe and pleasant experience for guests.
 - 11.3. The OPERATOR shall ensure a minimum of one staff member is on site during all operating hours with Level II background screenings required by Section 435.04, Florida Statutes, which provides: The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction [of the crimes listed in subsection (2)(a)-(zz) or (3) of Section 435.04, F.S.] The OPERATOR further agrees that this agreement may be terminated effective immediately for violation of Section 435.04, F.S.
 - 11.4. OPERATOR shall ensure all STAFF have current certifications, licenses and training including safe food handling and responsible beverage service.
 - 11.5. In the event that any person or vendor on OPERATOR's STAFF is found to be unacceptable to the CITY, including, but not limited to, demonstration that he or

she is not qualified, the CITY shall notify the OPERATOR in writing of such fact and the OPERATOR shall immediately remove said STAFF unless otherwise agreed and, if requested by the CITY, promptly provide a replacement acceptable to the CITY.

- 11.6. OPERATOR shall ensure that STAFF working at CONCESSION shall not discriminate against any person because of race, color, creed, sex, national origin, sexual orientation, gender or economic status by refusing to furnish such person any service or privilege offered or enjoyed by the general public.
- 11.7. OPERATOR and its STAFF shall be distinctively uniformed to be distinguishable as OPERATOR's Staff and not as an employee of the CITY.
- 11.8. OPERATOR's STAFF providing services under this Agreement shall wear clothing appropriate for a professional, high quality CONCESSION. Uniforms will be clean, professional beach casual branded apparel (logo tees/polos, appropriate footwear) compliant with health codes. The logo, seal, or name of the CITY shall not be used without prior written permission of the CITY.
- 11.9. OPERATOR shall ensure that its STAFF shall conduct themselves courteously in their relations with the public.
- 11.10. OPERATOR shall observe the rate of pay, benefits and working conditions that are being generally paid to persons employed in similar business in the immediately surrounding community.
- 11.11. OPERATOR shall be responsible for all staffing costs associated with operation of the CONCESSION.
12. **Music Licensing.**
 - 12.1 The OPERATOR shall not use, play or perform copyrighted music without appropriate licensing or other permission. The OPERATOR shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The OPERATOR agrees to indemnify and hold harmless the CITY of Hallandale Beach from damages for unauthorized use or performance of copyrighted music, including the defense of the CITY in any resulting litigation.
13. **Improvements.**

OPERATOR may, with prior written approval of the CITY, make improvements to the property to facilitate provision of the CONCESSION, subject to the following terms and conditions:

 - 13.1. OPERATOR shall be responsible for and must submit to the applicable Governmental Authorities any legally required applications for the construction of the improvements.
 - 13.2. Unless the CITY agrees otherwise in writing, OPERATOR will be responsible for payment of all costs of the improvements.

- 13.3. Any permitted alterations or additions will be made in a good and workmanlike manner, in accordance with approved plans, if required, and in accordance with all governmental requirements.
 - 13.4. Any improvements that constitute a fixture shall be the exclusive property of the CITY.
14. **Use of PROPERTY.**
- 14.1. **Permitted Uses.** OPERATOR agrees to use the CONCESSIONs only for the uses expressly permitted by this Agreement (“Permitted Uses”) and for no other use without the prior written consent of the CITY, which consent may be withheld by CITY in its sole discretion.
 - 14.2. **Signage.** Any signage desired by OPERATOR must be approved by the CITY. Outside signage must be approved in advance by the CITY. Approvals shall not be unreasonably withheld, conditioned, or delayed. OPERATOR will maintain all signage in good condition and repair, and in accordance with all applicable Governmental Requirements. CITY reserves the right to remove, at OPERATOR’s expense, any unapproved signage without notice to OPERATOR. OPERATOR shall be entitled to place signage on the marquis for South CITY Beach Park.
 - 14.3. **Advertising.** OPERATOR will not advertise the business of OPERATOR conducted on the PROPERTY in any manner that is offensive, inappropriate, or inconsistent with applicable law or CITY provided written guidelines.
 - 14.4. **Intellectual PROPERTY.** OPERATOR will not use the name of the CITY, the name “South City Beach Park,” or the CITY seal/logo, or any other CITY likeness in any advertising or publications, including menus, without CITY’s prior written approval. CITY shall not use the name of Beacheria, LLC, logo or any other Beacheria, LLC likeness, in any advertising or marketing publication(s) without OPERATOR's prior written approval. Approvals shall not be unreasonably withheld, conditioned, or delayed.
 - 14.5. **No Sales of Articles.** OPERATOR will not, except with CITY’s prior written approval, exhibit, sell, rent, or offer for sale on the PROPERTY any items other than items connected with the CONCESSION contemplated by this Agreement.
 - 14.6. **Compliance with Governmental Requirements.** OPERATOR will comply with all Governmental Requirements in the use and operation of the PROPERTY. OPERATOR will not use or occupy the PROPERTY in any manner that would interfere with the use of the PROPERTY as a public facility.
 - 14.7. **No Nuisance; No Waste, Control of Noise.** OPERATOR will not commit or permit any waste, odor, noise, nuisance, or any activity which violates any Governmental Requirement, or which disturbs the quiet enjoyment of visitors to the PROPERTY or adjacent properties. OPERATOR shall be responsible for monitoring and controlling the level of noise coming from the CONCESSION and its participants, so as to abide by the Hallandale Beach Code of Ordinance, Chapter 19, Article I, Section 19-18 to 19-21, Noise as provided in the attached Exhibit, so

as not to disturb the visitors of the PROPERTY or adjacent properties.

- 14.8. **No Hazardous Materials.** OPERATOR will not permit flammable materials such as gasoline, kerosene, naphtha, benzene, explosives or other articles, goods or merchandise of an intrinsically hazardous or dangerous nature to be brought onto the PROPERTY, unless such materials are customarily used or required in connection with the Permitted Uses.
- 14.9. **No Negative Impact.** OPERATOR will ensure CONCESSION is operated so that the environment is not negatively impacted.
- 14.10. **No Fumes.** OPERATOR will not permit any odors, acids, vapors or other gases or materials to be discharged from the CONCESSION.
- 14.11. **No Obstructions.** OPERATOR will use reasonable efforts not to obstruct any sidewalk, passageway, entrance, exit, or other area on the PROPERTY.
- 14.12. **Doors and Locks.** If the CITYs has not already done so, OPERATOR will install locks on the doors of the CONCESSION and will provide the CITY with at least two copies of each key for each lock. OPERATOR will keep doors, windows, and other means of entry to the CONCESSION secure during non-operating hours. Upon termination of this Agreement, OPERATOR will surrender all keys to the CITY.
- 14.13. **Animals.** No dog or other animal of any kind, except Service Animals as defined by the Americans with Disabilities Act, shall be permitted in the CONCESSION or any part thereof. Crime deterrent, emotional support, well-being, comfort or companionship pets are not Service Animals and are not to be allowed in the CONCESSION or any part thereof.
- 14.14. **Rules and Regulations.** CITY may from time to time adopt reasonable rules and regulations pertaining to the use and operation of the CONCESSION.
- 14.15. **Polystyrene Policy.** All CONCESSION operations shall comply with the CITY's Expanded Polystyrene Policy as provided in Exhibit D hereto.
- 14.16. **Plastic Straw Prohibition.** All CONCESSION operations shall comply with the CITY's prohibition on distribution, sale or use of plastic beverage straws ordinance as provided in Exhibit F hereto.
- 14.17. **Tobacco.** The sale or use of tobacco or vape products shall be prohibited at all times at the CONCESSION. The PROPERTY shall be a smoke-free facility.
- 14.18. **Parking, Curbside Service, & Service Access.** City will assign three parking spaces nearest CONCESSION for OPERATOR during operating hours. CITY will provide no-fee parking for OPERATOR and staff.

CITY will allow reasonable access for vendor/ deliveries subject to safety and ADA requirements.

- 15. **Utilities.** During the Term of this Agreement, CITY will pay for utilities serving the CONCESSION, including but not limited to water and sewer, gas, sanitation and electricity. OPERATOR will pay for phone and internet attributed to CONCESSION.

16. **Taxes.** During the Term, OPERATOR will be responsible for any and all taxes levied against CONCESSION by any Governmental Authority. OPERATOR shall pay all taxes prior to delinquency. OPERATOR will have the right to contest any taxes and assessments at OPERATOR's expense. The CITY agrees to cooperate with OPERATOR in any contest of taxes, but OPERATOR will be responsible for any costs incurred by CITY in such contest.
17. **OPERATOR's Records and Reporting Requirement.** For purposes of this Agreement, Gross Revenue will include all revenue collected by OPERATOR from its use and operation of the CONCESSION.

OPERATOR must calculate its Gross Revenue and report it to CITY on an annual basis within 30 days at the end of each fiscal year during the Term. The CITY Reserves the right to inspect the OPERATOR's financial records including any digital systems and third-party sales platforms if applicable necessary to verify the report. If said inspection is requested, the OPERATOR will provide access to said systems and platforms, and the CITY will not be provided with direct access. OPERATOR understands that the provisions of this section do not override the legal requirements of public records laws and are secondary to those requirements.

OPERATOR's annual Gross Revenue reports may be audited every five years by a certified public accountant selected by CITY.

18. **Assignment and Subcontracting.**
 - 18.1. **Agreement Not Assignable.** OPERATOR may not assign this Agreement, including any assignment by OPERATOR of its rights or obligations, without the prior written consent of the CITY, which consent may be withheld or denied in CITY's sole discretion. OPERATOR acknowledges that CITY has entered into this Agreement with OPERATOR because of its experience, expertise and reputation, and that OPERATOR's involvement in the Project is one of the primary reasons the CITY is entering into this Agreement.
 - 18.2. **Subcontracting.** OPERATOR will have the right to subcontract certain of its operation and maintenance obligations under this Agreement with the prior written consent of the CITY.
19. **CITY's Contract Administrator.** The CITY Manager may designate one or more employees or agents to be the CITY's Contract Administrator to manage and supervise the execution of the services and the terms and conditions of this Agreement. The CITY's Contract Administrator may, during normal business hours, visit, inspect or appraise the CONCESSION and PROPERTY, and any materials, contracts, records, plans, and specifications relating to the Agreement, whether kept at OPERATOR's offices or elsewhere. The CITY's Contract Administrator may also review the books, records, accounts and other financial and accounting records of OPERATOR wherever they are kept and make copies of

such records as often as may be requested. OPERATOR agrees to cooperate with the CITY to enable CITY's Contract Administrator to conduct site visits and inspections. OPERATOR acknowledges that the CITY's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement, except as expressly set forth in this Agreement.

20. **Audit Rights**

The CITY reserves the right to audit the records of the OPERATOR for the services provided under the contract at any time during the performance and term of the contract and for a period of five (5) years after completion and acceptance by the CITY. If required by the CITY, the OPERATOR agrees to submit to an audit by the CITY or an independent certified public accountant selected by the CITY. The OPERATOR must allow the CITY to inspect, examine and review records of the OPERATOR in relation to this contract at any and all times during normal business hours during the term of the contract.

21. **Indemnification by OPERATOR.** OPERATOR agrees to indemnify, defend (with counsel approved by the CITY) and hold harmless CITY from and against any and all claims, demands, fines, lawsuits, actions, proceedings, orders, decrees, judgments, costs, and expenses of any kind or nature, including reasonable attorneys' fees, resulting directly or indirectly from, out of, or in connection with the use or occupancy of the PROPERTY by OPERATOR, its employees, agents, contractors, subcontractors, guests or invitees. This indemnification will not apply to matters caused by the gross negligence or willful misconduct of the CITY or its employees.

21.1. **Indemnification Includes Losses from Construction.** OPERATOR's indemnity under this Agreement includes indemnification of CITY against any losses resulting from the construction of any improvements and any subsequent renovation or alteration of the improvements by the OPERATOR.

21.2. **Indemnification from General Contractor.** OPERATOR covenants and agrees that any contracts for work entered into by OPERATOR and a general contractor or other contractor in privity with OPERATOR will include the indemnities required by this Agreement from the general contractor or other contractor in privity with OPERATOR in favor of the CITY.

21.3. **OPERATOR Liability Not Limited By Insurance.** The liability of OPERATOR under this Agreement will not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Agreement.

21.4. **CITY's Tort Liability.** Any tort liability to which the CITY is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. The CITY expressly does not waive any of its rights and immunities under applicable law.

22. **Insurance.** The following insurance provisions and requirements apply to the CONCESSION.

22.1. **General Insurance Provisions.** Prior to any activity on the PROPERTY, and at all times during the Term, OPERATOR will be responsible for procuring the insurance required by this Agreement, at OPERATOR's sole cost and expense.

22.1.1. All policies must be executable in the State of Florida.

22.1.2. All insurers must maintain an A.M. Best rating of A- or better.

22.1.3. OPERATOR's insurance policies will be primary over any and all insurance available to the CITY, whether purchased or not, and must be non-contributory.

22.1.4. The OPERATOR will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The CITY will be included as an "Additional Insured" on the Commercial General Liability, Liquor Liability and Umbrella Liability policies.

22.2. **Evidence of Insurance.** Prior to the Effective Date, OPERATOR must provide satisfactory evidence of the required insurance to the CITY. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The CITY, at its sole option, may request a certified copy of any or all insurance policies required by this Agreement. Along with each certificate of insurance, OPERATOR must deliver to CITY a letter from the agent or broker placing the insurance, certifying that the coverage provided meets the coverage required under this Agreement.

22.3. **Cancellations and Renewals.** All insurance policies must specify they are not subject to cancellation or non-renewal without a minimum of 45 days prior written notification to the OPERATOR and CITY, and a minimum of 10 days notification for non-payment of premium.

22.6. **Required Coverages.** At a minimum, OPERATOR will procure and maintain the following insurance coverages:

22.6.1. **Business Interruption Insurance.** During the term of this Agreement, OPERATOR is required to maintain Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to 6 months of OPERATOR's net profit plus continuing expenses associated with the CONCESSION. The CITY and OPERATOR will jointly review OPERATOR's projected gross revenues periodically, and OPERATOR will be responsible for adjusting the limits of the policy based on this review and CITY's request for adjustment.

22.6.2. **Commercial General Liability Insurance.** During the term of the Agreement, OPERATOR must maintain Commercial General Liability Insurance. Coverage must include, as a minimum: (a)

Premises Operations, (b) Products and Completed Operations, (c) Blanket Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of PROPERTY Damage. The minimum limits acceptable are \$1,000,000 Combined Single Limit (CSL). The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.

22.6.3. **Workers' Compensation and Employers' Liability.** OPERATOR must maintain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute §440, as applicable. In addition, the OPERATOR must obtain Employers' Liability Insurance with limits of not less than: (a) \$500,000 Bodily Injury by Accident, (b) \$500,000 Bodily Injury by Disease, and (c) \$500,000 Bodily Injury by Disease, each employee.

22.6.4. **Professional Liability.** OPERATOR must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to any renovation/construction activities is obtained prior to the commencement of any renovation/construction activities on the PROPERTY. If coverage is provided on a "Claims Made" basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$3,000,000 in the aggregate annually.

22.6.5. **Contents/Property Coverage Policy.** OPERATOR shall at all times procure and maintain a Contents/Property insurance policy insuring the fixtures, merchandise and other personal property owned or installed in the CONCESSION by the OPERATOR in an amount equal to the replacement cost thereof.

22.6.6. **Liquor Liability Insurance.** OPERATOR shall procure and maintain Liquor Liability Insurance covering claims arising out of the sale, service, or furnishing of alcoholic beverages, with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The City of Hallandale Beach shall be named as Additional Insured. This coverage shall not exclude assault, battery, or employee intoxication claims.

22.7. **Premiums and Renewals.** OPERATOR must pay all premiums for the insurance required by this Agreement as they become due. OPERATOR must renew or replace each policy prior to the policy expiration date, and deliver to the CITY evidence of payment of the full premium for the policy. OPERATOR will promptly deliver to the CITY all original Certificates of Insurance and copies of all renewal or replacement policies.

- 22.8. **Adequacy Of Insurance Coverage.** The CITY has the unilateral right to periodically review the adequacy of the insurance coverage required by this Agreement. The CITY may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the PROPERTY (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). OPERATOR has the right to contest the request for a change in insurance, but must be commercially reasonable.
- 22.9. **Inadequacy of Insurance Proceeds.** In the event that insurance proceeds are not adequate to rebuild and restore damaged PROPERTY to their previous condition before an insurable loss occurs, and the cause of the deficiency in insurance proceeds is the OPERATOR's failure to adequately insure the CONCESSION as required by this Agreement, OPERATOR must rebuild and restore the PROPERTY as required by this Agreement and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.
- 22.10. **CITY May Procure Insurance if OPERATOR Fails To Do So.** If OPERATOR refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the CITY, at its option, may procure or renew such insurance. All sums paid by the CITY for insurance will be immediately payable by OPERATOR to the CITY together with interest at the highest rate allowed by law from the date the sums were paid by the CITY to the date of reimbursement by OPERATOR. OPERATOR must pay to CITY the amounts paid by the CITY for insurance, together with accrued interest, within ten days after notice from CITY.
- 22.11. **Effect of Loss or Damage.** Except for loss or damage caused by Force Majeure or act of the City, any loss or damage to the PROPERTY by fire or other casualty at any time will not operate to terminate this Agreement or to relieve or discharge OPERATOR from the performance and fulfillment of any of OPERATOR's obligations pursuant to this Agreement, including without limitation, the payment of the Annual Fee, as the same may become due and payable. The CITY's acceptance or approval of any insurance agreement will not relieve or be construed to relieve OPERATOR from any liability, duty or obligation set forth in this Agreement.
- 22.12. **Proof of Loss.** If all or any part of the PROPERTY (including without limitation, any personal property furnished or installed in the CONCESSION by the CITY) is damaged or destroyed, OPERATOR must promptly make proof of loss in accordance with the terms of the insurance policies and must proceed promptly to collect all valid claims which may have arisen against insurers or others based upon the damage or destruction. OPERATOR is required to give CITY written notice within 48 hours of any material damage or destruction. For purposes of this Section, "material damage or destruction" means either (a) any casualty or other loss with

a repair cost in excess of \$50,000 (based on commercially reasonable standards) or, (b) any casualty or other loss which will have a material adverse effect on the day to day operations of the CONCESSION or PROPERTY, regardless of the repair cost.

- 22.13. **Payment of Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the insurance policies obtained by the OPERATOR pursuant to this Agreement shall be payable to the CITY, which will apply the proceeds to the rebuilding, replacing and repairing of the PROPERTY. The remainder shall be payable to the OPERATOR.

22.13.1. To an Insurance Trustee, if the total recovery is in excess of \$100,000 (as adjusted for inflation over the Term), with the proceeds to be held by the Insurance Trustee for disbursement to OPERATOR pending establishment of reconstruction, repair or replacement costs. The Insurance Trustee will be a commercial bank or trust company designated by OPERATOR and approved by the CITY, whose approval will not be unreasonably withheld or delayed.

- 22.14. **Disposition of Insurance Proceeds for Reconstruction.**

22.14.1. All insurance proceeds must be applied for the reconstruction, repair or replacement of CONCESSION and the personal PROPERTY of OPERATOR contained in the CONCESSION (the "Reconstruction Work"). The CONCESSION and any personal PROPERTY must be restored to a condition comparable to the condition prior to the loss or damage.

22.14.2. The Insurance Trustee will disburse to the OPERATOR the amount of insurance proceeds that are required for the Reconstruction Work. OPERATOR will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the CITY and OPERATOR.

22.14.3. If the CITY and OPERATOR do not agree on the schedule or values, they will arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Miami, Florida.

22.14.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to OPERATOR.

- 22.15. **Covenant for Commencement and Completion of Reconstruction.** OPERATOR covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three months after the insurance proceeds for the destroyed or damaged CONCESSION have been received by OPERATOR or the Insurance Trustee, and to fully complete the Reconstruction Work as expeditiously as possible under the circumstances. With respect to any

Reconstruction Work, OPERATOR must comply with all of the provisions of this Agreement regarding renovation or alteration of the CONCESSION.

- 22.16. **Waiver of Subrogation.** A full waiver of subrogation must be obtained from all insurance carriers. OPERATOR will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the CITY in connection with any damage covered by any policy.
22. **Inadequacy of Insurance Proceeds.** OPERATOR's obligation under the Agreement to timely commence and complete restoration of any damaged or destroyed CONCESSION is absolute, regardless of whether any insurance proceeds received are adequate to pay for the restoration.
23. **Additional OPERATOR Events of Default.** In addition to violation of the terms and conditions of this agreement and failure to perform in accordance with this agreement, each of the following occurrences also constitutes a default by OPERATOR under the Agreement:
- 23.1. **Voluntary Bankruptcy.** If OPERATOR (a) is voluntarily adjudicated a bankrupt or insolvent, (b) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its PROPERTY, (c) files a petition seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, (d) makes a general assignment for the benefit of creditors, or (e) admits in writing its inability to pay its debts as they mature.
- 23.2. **Involuntary Bankruptcy.** If a receiver or trustee is appointed for OPERATOR or for all or any part of its properties without consent and such appointment is not vacated within 60 days, or if a petition is filed against OPERATOR seeking relief, including reorganization, arrangement or similar relief, under the present bankruptcy code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, and such petition is not dismissed within 90 days after the filing thereof.
- 23.3. **Dissolution or Change of Ownership.** If OPERATOR voluntarily or involuntarily dissolves or liquidates or substantially changes ownership, unless part of a transaction specifically approved by CITY or is otherwise permitted under this Agreement.
24. **Force Majeure.** Neither the CITY nor OPERATOR, as the case may be, will be considered in breach of or in default of any of their respective non-monetary obligations under this Agreement as a result of an unavoidable delay due to strikes, lockouts, acts of God, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). To invoke this paragraph, immediate written notice, consistent with the "Notice" provisions of this Agreement, must be sent by the non-performing party describing the circumstances constituting force majeure and proof that the

non-performance or delay of performance is a direct and reasonable result of such event(s). The CITY reserves its rights to challenge the invocation by the OPERATOR within ten (10) calendar days of receipt of said notice, in such case uninterrupted performance is required. However, in the event the invocation is accepted by the CITY, the OPERATOR must take all reasonable measures to mitigate any and all resulting damages, costs, delays or disruptions to the OPERATOR's performance requirements under this Agreement. All obligations must resume when the circumstances of such event(s) have subsided, or other arrangements are made pursuant to a written amendment to this Agreement. During any Force Majeure that materially impairs operations, the Annual Fee shall abate proportionally. If Force Majeure continues more than thirty (30) consecutive days or sixty (60) days aggregate in any contract year, either party may terminate without penalty.

25. **Suspension.** The City Manager may suspend this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event that the City Manager determines that suspension is necessary to protect the public health, safety, or welfare, regardless of cause. In the event of suspension due to a health, safety, or welfare issue, the Agreement shall only be suspended for a period of time determined, in the City Manager's sole discretion, to be the shortest practicable time necessary to remedy the problems. Thereafter, the Agreement shall be (i) reinstated by the CITY if the health, safety, or welfare issue is resolved in a manner and time frame satisfactory to the City Manager in his or her sole discretion, or (ii) terminated by the City Manager in accordance with the provisions below. During any Suspension, the Annual Fee shall abate proportionally. If Suspension continues more than thirty (30) consecutive days or sixty (60) days aggregate in any contract year, either party may terminate without penalty.

26. **Remedies for Default; Remedies Cumulative and Concurrent.** If an event of default occurs, either party may seek any or all legal and equitable remedies available, including, without limitation, cancellation of the Agreement, removal of OPERATOR from the PROPERTY, specific performance, injunctive relief, and damages. No right, power or remedy of CITY or OPERATOR provided in this Agreement is intended to be exclusive of any other right, power, or remedy. Each right, power and remedy is cumulative, concurrent and in addition to any other right, power or remedy of either party now or hereafter existing at law or in equity. Either party may pursue its rights, powers and remedies separately, successively, or together against the other party. Failure by either party to exercise any right, power or remedy will not be construed as a waiver or release of such right, power or remedy.

26.1. **Waiver, Delay or Omission.** No waiver of any event of default extends to or affects any other event of default or impairs any party's rights, powers or remedies as to any other event of default. No delay or omission by a party to exercise any right, power or remedy may be construed to waive an event of default or to constitute acquiescence to an event of default.

27. **Termination by the City.**

27.1. **Immediate Termination for Cause.** The CITY at the CITY's sole discretion, may, upon written notice to the OPERATOR, terminate this Agreement effective immediately upon receipt of notice, upon the occurrence of any of the following:

- 27.1.1. Institution of proceedings in voluntary bankruptcy or reorganization by the OPERATOR as further specified in Section 22, above.
- 27.1.2. Institution of proceedings in involuntary bankruptcy against the OPERATOR as further specified in Section 22, above.
- 27.1.3. Assignment by OPERATOR.
- 27.1.4. Abandonment or discontinuation of operations for more than a 48 hour period without prior written approval from the CITY. The foregoing shall not apply to emergencies which shall include, but not be limited to, inclement weather, lack of electrical service, acts of God, and other conditions beyond the control of OPERATOR.
- 27.1.5. Unapproved change of ownership interest in OPERATOR and/or failure to submit the ownership list within 24 hours upon the request of the CITY.
- 27.1.6. Failure to cease any activity which causes limitation of CITY's use of the Park.
- 27.1.7. After Suspension pursuant to Section 24 above if the City Manager determines that termination is necessary to protect the health, safety, or welfare of the public or that the issue creating a danger to the health, safety and welfare of the public is a recurring issue.
- 27.1.8. Violation of provisions relating to the sale of alcoholic beverages pursuant to paragraph 7.3 above.

27.2. **Termination for Cause with Opportunity to Cure.** The CITY may, upon written notice to the OPERATOR, terminate this Agreement effective after twenty (20) calendar days of written notice of termination, upon the occurrence of any of the following:

- 27.2.1. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if OPERATOR makes the required payment(s) during the seven (7) calendar days following mailing of the written notice of termination.
- 27.2.2. Breach or non-performance of any covenant of this Agreement (other than non-payment of fees and others listed above), and failure of the OPERATOR to remedy such breach within fifteen (15) calendar days from the date of the written notice of termination. If

such breach or non-performance cannot be cured within the 15-day period cure period, OPERATOR will not be deemed in default as long as OPERATOR has commenced and is diligently proceeding in good faith to cure the breach or non-performance, and the non-performance is cured within a reasonable time after the notice of non-performance.

27.2.3. Records and Audit Defaults: The inability or failure of the OPERATOR to provide the CITY with records or access to premises in accordance with the Audit and Records provisions of this agreement if such failure is not remedied within seven (7) days from the date of the written notice of termination.

27.3. **Habitual Default.** Notwithstanding the foregoing, in the event that the OPERATOR has been notified of breaches or non-performance four (4) times within a 12 month period, regardless of whether the OPERATOR has cured each individual condition of breach or default as provided above, the OPERATOR may be determined by the CITY Manager to be an "habitual violator".

27.3.1. At the time that such determination is made, the CITY Manager shall issue to the OPERATOR a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the OPERATOR that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement.

27.3.2. In the event of any such subsequent breach or default, CITY may cancel this Agreement upon the giving of written notice of termination to the OPERATOR, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the OPERATOR shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the OPERATOR shall discontinue its operations, and proceed to remove all its personal PROPERTY in accordance with this agreement.

27.4. **Termination for Convenience.** Upon one hundred and twenty (120) calendar days written notice to the OPERATOR as provided in the "Notice" provisions of this Agreement, the CITY may without cause and without prejudice to any other right or remedy, terminate the contract for the CITY's convenience whenever the CITY determines that such termination is in the best interest of the CITY. Where

the Agreement is terminated for the convenience of the CITY the notice of termination to the OPERATOR must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of termination. The OPERATOR must discontinue all work on the appointed last day of service.

27.5. In the event of a termination of this Agreement by CITY, OPERATOR will have no further rights under this Agreement. Upon termination, OPERATOR shall immediately cease all operations at the PROPERTY, and shall pay in full all amounts due CITY as set forth in this Agreement through the date of termination. OPERATOR shall vacate the PROPERTY upon the effective date of termination, including removal of all personal property belonging to the OPERATOR. OPERATOR shall not remove or damage any permanent fixture and shall be responsible for repairs of any damage caused by the removal of personal property. OPERATOR will be liable for all compensatory damages incurred by CITY in connection with the event of default.

28. **Termination by OPERATOR.** OPERATOR shall have the right upon written notice to the CITY by certified or registered mail to the address set forth in this agreement to terminate this Agreement as follows:

28.1. With ninety (90) days written notice of termination for a breach or non-performance by the CITY of any of the terms, covenants or conditions contained in this Agreement, if the CITY fails to remedy such breach or non-performance for a period of sixty (60) calendar days after receipt of written notice of termination.

28.2. Immediate termination upon the assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Park, or any substantial part, or parts, thereof in such a manner as substantially to restrict OPERATOR's operations for a period of ninety (90) calendar days or more.

28.3. With one hundred and twenty (120) days written notice of termination for convenience.

29. **Agreement Subject to Funding**

This agreement will remain in full force and effect only as long as the funding required for execution of this Agreement has been appropriated by the City Commission of the City of Hallandale Beach in the annual budget for each fiscal year of this Agreement and is subject to termination without any penalty due to lack of funding. Failure to fund the operation, in whole or in part, of the South Beach City Park, shall constitute a lack of funding for the purposes of this section.

and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement will be those of OPERATOR, which policies of OPERATOR will not conflict with City, State, or United States policies, rules or regulation relating to the use of Contractor's funds provided for herein. The OPERATOR agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made it own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement must not be construed as creating any joint employment relationship between the OPERATOR and the City and the City will not be liable for any obligation incurred by OPERATOR, including but not limited to unpaid minimum wages and/or overtime premiums.

32. Public Records

City is a public agency subject to Chapter 119, Florida Statutes, as amended from time to time. To the extent OPERATOR is acting on behalf of the City pursuant to Section 119.0701, Florida Statutes, as amended from time to time, OPERATOR must comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, OPERATOR agrees to:

- 32.1 Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the service.
- 32.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or all the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 32.3 Ensure that public records that are exempt, or confidential and exempt, from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the OPERATOR does not transfer the records to the City.
- 32.4 Upon completion of the services within this Agreement, at no cost, either transfer to the City all public records in possession of the OPERATOR or keep and maintain public records required by the City to perform the services. If the OPERATOR transfers all public records to the City upon completion of the services, the OPERATOR must destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the OPERATOR keeps and maintains public records upon completion of the services, the Contractor must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

32.5 IF OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC

**RECORDS RELATING TO THIS AGREEMENT,
CONTRACT THE CITY'S CUSTODIAN OF PUBLIC
RECORDS AT 954-457-1486,
CITYCLERKOFFICE@COHB.ORG, 400 S FEDERAL
HIGHWAY, HALLANDALE BEACH, FL 33009**

If OPERATOR does not comply with this section, the City will enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

33. Trade Secrets and Proprietary Confidential Business Information

Documents submitted by OPERATOR which constitute trade secrets as defined in Sections 812.081 and 688.002, Florida Statutes, as amended from time to time, or proprietary confidential business information when held by the City as utility owner, consistent with Section 119.0713(5), Florida Statutes, as amended from time to time, and which are clearly marked or stamped as confidential by the OPERATOR at the time of submission to the City, will not be subject to public access. However, should a requestor of public records challenge OPERATOR's interpretation of the term "trade secrets" or "proprietary confidential business information," within five (5) calendar days of such challenge, OPERATOR must provide a separate written affidavit that include an indemnification and release guarantee, as approved by the City Attorney or designee, to the City to support its claims that the alleged trade secrets or proprietary confidential business information actually constitutes same as defined by law. OPERATOR must demonstrate the need for confidentiality of the documentation by showing business advantage or an opportunity to obtain an advantage if the documentation was released. Otherwise, OPERATOR is required to timely seek a protective order in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County to prevent the City's release of the requested records.

34. Public Entity Crimes Statement

Pursuant to Section 287.133(2)(a), Florida Statutes, as amended from time to time, OPERATOR hereby certifies that neither it nor its affiliate(s) have been placed on the convicted vendors list following a conviction for a public entity crime. If placed on that list, OPERATOR must notify the City immediately and is prohibited from providing any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, as amended from time to time, for Category TWO as may be amended, for a period of thirty-six (36) months from the date of being placed on the convicted vendors list.

35. **Foreign Gifts and Contracts**

The OPERATOR must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes , Pursuant to Section 268.101(7)(b), Florida Statutes: “In addition to any fine assessed under [§286.010(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity for eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission [Governor and Cabinet per §14.202, Florida Statutes] for good cause.”

36. **Scrutinized Companies pursuant to Sections 287.135 and 215.473, Florida Statutes**

OPERATOR hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List not the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that OPERATOR has falsely certified facts under this paragraph or if OPERATOR is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Agreement, City will have all rights and remedies to terminate this Agreement consistent with Section 287.135, Florida Statutes , as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, Florida Statutes, as amended.

37. **Antitrust Violations; Denial or Revocation under Section 287.137, Florida Statutes**

Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering this Agreement, OPERATOR certifies neither it nor its affiliate(s) are on the antitrust violator list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to the list will result in termination of this Agreement, at the option of the CITY consistent with Section 287.137, Florida Statutes, as amended.

38. **Environmental and Social Government and Corporate Activism**

Pursuant to Section 287.05701, Florida Statutes, as may be amended, City cannot give preference to a Contractor based on social, political or ideological interests such as:

38.1. The Contractor’s political opinions, speech, or affiliations,

38.2. The Contractor’s religious beliefs, religious exercise, or religious affiliations,

- 38.3. The Contractor's lawful ownership of a firearm,
- 38.4. The Contractor's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition,
- 38.5. The Contractor's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture,
- 38.6. The Contractor's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking,
- 38.7. The Contractor's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph,
- 38.8. The Contractor's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such Contractor is in compliance with applicable state or federal law:
 - 38.8.1. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;
 - 38.8.2. Social governance standards, benchmarks, or requirements, including but not limited to, environmental or social justice;
 - 38.8.3. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or
 - 38.8.4. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

Contractors are also prohibited from giving preference to subcontractors based on the above referenced factors. Violations of this Section will result in termination of this Agreement any may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

39. **Miscellaneous Provisions.**

- 39.1. **Amendment.** No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by both parties to this Agreement.
- 39.2. **Attorneys' Fees.** If any litigation arises out of this Agreement, the prevailing party is entitled to recover its attorneys' fees and costs at both the trial and appellate levels.
- 39.3. **Construction of Agreement.** Both parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The parties acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments, and have

sought and received whatever competent legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations set forth in this Agreement.

- 39.4. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.
- 39.5. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding among the parties relating to the subject matter of the Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the parties, concerning the matters addressed herein.
- 39.6. **Governing Law; Venue; Waiver of Jury Trial.** This Agreement will be interpreted and enforced in accordance with Florida law. Venue for any litigation arising out of this Agreement will be Seventeenth Judicial Circuit in and for Broward County, Florida. The parties hereby voluntarily waive any right to a trial by jury in any litigation which may arise out of or in connection with this Agreement or the performance hereof.
- 39.7. **No Personal Liability of City.** OPERATOR acknowledges that this Agreement is entered into by a municipal corporation. OPERATOR agrees that no individual elected official, employee, agent, or representative of CITY will have any personal liability under this Agreement or any document executed in connection with this Agreement.
- 39.8. **No Third Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
- 39.9. **Section and Paragraph Headings.** The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.
- 39.10. **Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Agreement, or the application of any provisions of this Agreement, to any person or circumstance is for any reason and to any extent, invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties contained herein, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected, and will be enforced to the fullest extent permitted by law.
- 39.11. **Signatories' Authority.** The individuals signing this Agreement represent and warrant that they have the authority and approval to execute this Agreement on behalf of the party they are identified as representing below. The undersigned representatives represent that they are agents of their respective parties duly authorized to execute contracts generally and this Agreement in particular.

39.12. **Successors and Assigns.** This Agreement and all obligations hereunder will be binding upon and will inure to the benefit of the CITY and the OPERATOR, and their permitted legal representatives, successors, and assigns.

The parties have signed this Agreement on the dates set forth after their respective signatures.

[SIGNATURE BLOCKS AND ACKNOWLEDGMENTS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Commission action, signing by and through its CITY Manager, duly authorized to execute same, and Beacheria, LLC, signing by and through its _____, _____, duly authorized to execute same.

CITY:

CITY of Hallandale Beach, Florida

ATTEST:

Jenorgen Guillen, City Clerk

By: _____
Dr Jeremy Earle, City Manager

Date: _____

Approved as to legal sufficiency and form by

Jennifer Merino, City Attorney

OPERATOR:
Beacheria, LLC

By: _____
Print Name: _____
Title: _____
Address: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing Agreement was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of, on behalf of the limited liability company. He/she is personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

Notary: _____
Print Name: _____
Notary Public, State of _____
My commission expires: _____

A purple compass rose with a star-like center. The cardinal directions are labeled: 'N' at the top, 'S' at the bottom, 'E' on the right, and 'O' on the left. The rose has multiple concentric rings and points.

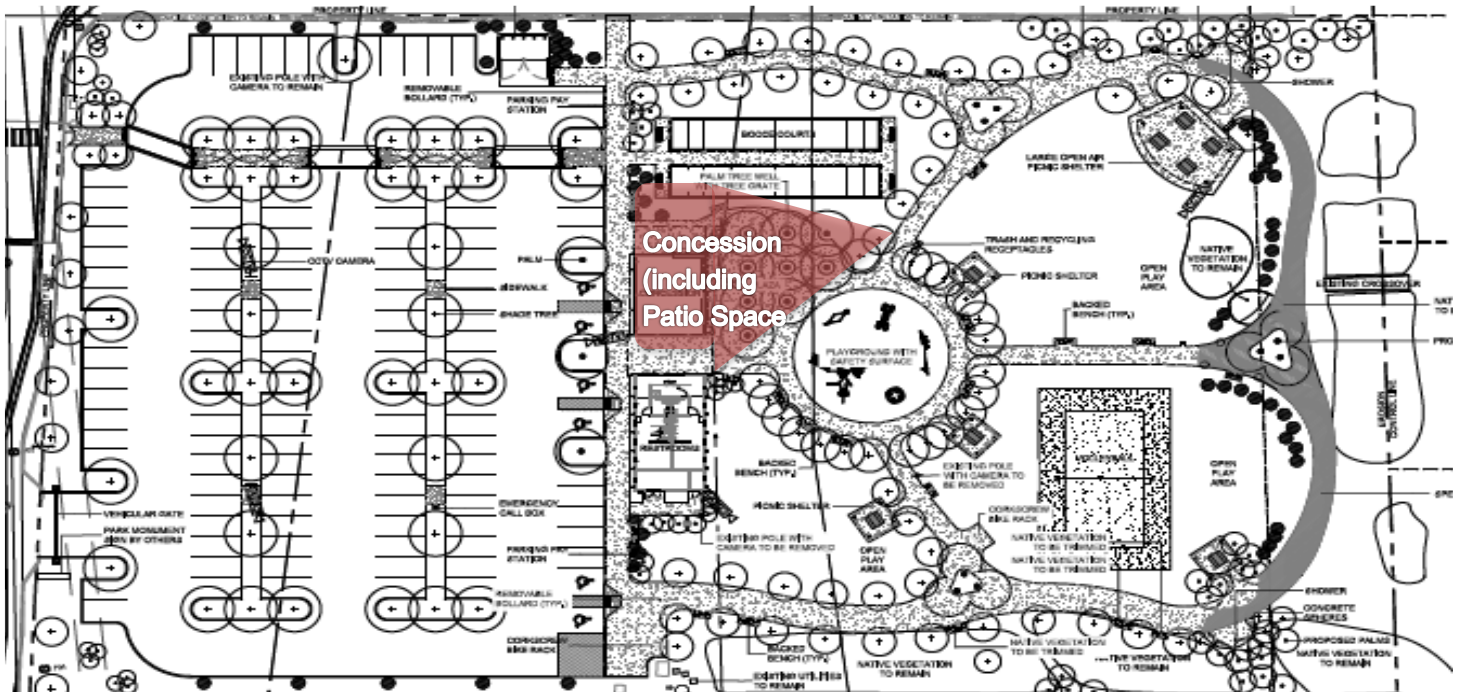


EXHIBIT B

SOUTH CITY BEACH PARK OPERATING AGREEMENT REPAIR AND MAINTENANCE ITEMS

General List of the Repair and Maintenance items.

The following is a general list of the repair and maintenance items. The list is not intended to be an exhaustive list.

PRE-POST STORM (BEACHERIA, LLC RESPONSIBILITY)

- Preparing facility for storms per the CITY's Emergency Plan
- Cleaning up facility after storms per the CITY's Emergency Plan

DAY-TO-DAY/PREVENTATIVE MAINTENANCE (BEACHERIA, LLC RESPONSIBILITY)

- Cleaning of facility interior all areas.
- Cleaning of facility exterior all areas.
- Purchasing and stocking janitorial supplies.
- Sweeping, mopping, buffing of floors
- Cleaning glass
- Cleaning and sanitizing of CONCESSION area.
- Keeping CONCESSION and patio spaces neat and clutter free
- Disposing of garbage
- Responsible for safety inspections for fire extinguishers and fire inspections
- Monitoring services of fire and security alarms if applicable.
- Interior Painting

MINOR REPAIRS/MAINTENANCE (BEACHERIA, LLC RESPONSIBILITY)

- HVAC repair and replacement to include preventative maintenance services and filter changes as recommended by manufacturer
- Replacement of light bulbs, ballasts interior
- Painting of interior of the building to include but not be limited to walls and doors
- Repair of walls, doors and hardware, floors, base boards, etc.
- Repairing damaged sinks, minor plumbing repairs, wall tiles, water coolers/filters
- Replacing light covers, electrical covers, minor electrical repairs, ceiling tiles
- Replace damaged hand dryers, paper towel, soap dispensers
- Sewer backups
- Acts of vandalism on CONCESSION Interior and windows installed by OPERATOR
- Maintenance, repair and replacement of the BEACHERIA, LLC provided equipment

CAPITAL REPAIR AND REPLACEMENT (CITY RESPONSIBILITY)

- HVAC capital replacement
- Roof
- Major Structural
- Exterior Building Painting
- Exterior Landscaping

- Exterior Lighting
- Acts of Vandalism on CONCESSION Exterior

Any repair or replacement item not specifically listed herein shall be the responsibility of the CITY if it:

- Involves a building system, structure, or fixture that has exceeded its useful life based on manufacturer recommendations or industry standards, and
- Has a replacement cost exceeding \$5,000 or qualifies as a capital improvement under the CITY's fixed asset or capital budgeting policies.
 - Useful life' will be determined by manufacturer's recommendations or, if unavailable, mutually agreed industry standards. Whether the \$5,000 threshold is met will be based on a third party estimate or two comparable quotes.

All OPERATOR-owned equipment, furnishings, and appliances located within the CONCESSION area, regardless of cost or age, shall remain the responsibility of BEACHERIA, LLC, unless otherwise agreed in writing by the CITY.

EXHIBIT C

SOUTH CITY BEACH PARK OPERATING AGREEMENT HALLANDALE BEACH CODE OF ORDINANCE, CHAPTER 19, ARTICLE I, SECTION 19/18-21, NOISE

Sec. 19-18. Noise; declaration of necessity.

The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the CITY; and the necessity in the public interest for the provisions and prohibitions contained and enacted in this article, is declared as a matter of legislative determination and public policy; and it is further declared that the provisions and prohibitions contained and enacted in this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the CITY and its inhabitants.

(Ord. No. 2014-24, § 1, 9-3-2014)

Sec. 19-19. General prohibition.

It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the CITY.

(Ord. No. 2014-24, § 1, 9-3-2014)

Sec. 19-20. Enumeration of prohibitions.

(a) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this Code; but this enumeration shall not be deemed to be exclusive, namely:

(1) Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the CITY, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any signaling device except one operated by hand or electrically; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.

(2) Radios, phonographs, etc. The using, operating or permitting to be played, used or operated any radio or television receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners. The operation of any such set, instrument, phonograph, machine or device at any time in such a manner as to be plainly audible at a distance of 100 feet from the building, structure, and vehicle or place where it is located shall be prima facie evidence of a violation of this subsection.

(3) Loudspeakers; amplifiers for advertising. The using, operating or permitting to be played, used, or operated of any radio or television receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of

sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(4) Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public street, particularly between the hours of 11:00 p.m. and 8:00 a.m. or any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office or in any dwelling, hotel or other type of residence or of any persons in the vicinity.

(5) Animals, birds, etc. The keeping of any animal or bird which by causing frequent or long-continued noise shall disturb the comfort or repose of any persons in the vicinity.

(6) Steam whistles. The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper CITY authorities.

(7) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises.

(8) Defect in vehicle or load. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(9) Loading, unloading, opening, etc., of boxes; trucks idling. It shall be unlawful for any person to load or unload any vehicle at commercial establishments located within 300 feet of a residential area between the hours of 8:00 p.m. and 8:00 a.m. The creation of a loud and excessive noise in connection with loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers is prohibited at all times. No person may allow a truck to stand or park with its engine running nor may a person allow the motor of a trailer attached or capable of being attached to a truck to run within 300 feet of a residential unit for a period exceeding five minutes between the hours of 8:00 p.m. and 8:00 a.m.

(10) Construction or repairing of buildings. The erection, including excavating, demolition, alteration or repair of any building other than between the hours of 8:00 a.m. and 6:00 p.m. on any day except Sundays, when such activity shall be prohibited other than between the hours of 1:00 p.m. and sunset, subject to the limitations set out below except in cases of urgent necessity in the interest of public health and safety and then only with a permit from the building official, which permit may be granted for a period not to exceed three days or less while the emergency continues; and such permit may be renewed for periods of three days or less while the emergency continues. If the building official shall determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the prohibited hours; and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours prohibited above upon application being made at the time the permit for the work is awarded or during the progress of the work. The activities regulated by this subsection may be performed between 1:00 p.m. and sunset on Sundays by the owner or occupant of the premises on which such activities are to be performed but this exception shall not permit the use of heavy equipment or use of hired help, between 1:00 p.m. and sunset on Sundays, which may be permitted by the building official only in cases of urgent necessity in the interest of public health and safety.

(11) Schools, courts, churches, and hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while they are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which

disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the area is a school, hospital or court street.

(12) Hawkers, peddlers and vendors. The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(13) Drums. The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(14) Metal rails, pillars and columns; transportation. The transportation of rails, pillars or columns of iron, steel or other material, over and along streets and other public places upon carts, drays, cars, trucks, or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

(15) Pile drivers, hammers, etc. The operation between the hours of 6:00 p.m. and 8:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance or operation, such as the use of explosives, which is attended by loud or unusual noise.

(16) Blowers. The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(b) There shall be no private or commercial collection of garbage and/or trash in the CITY between the hours of 8:00 p.m. and 7:00 a.m.

(c) The CITY manager is authorized to issue temporary permits to permit noise produced by temporary uses or activities which do not significantly endanger the health, safety or welfare of the community, but which may be in technical violation of the requirements of this section.

(Ord. No. 2014-24, § 1, 9-3-2014)

Sec. 19-21. Permit; test or measurement.

(a) In addition to the requirements of section 9-102, the making and creating of an excessive or unusually loud noise is declared to be unlawful, except when made under and in compliance with a permit, as provided in this section. Although a violation may occur without a measuring test, for the purpose of determining and classifying any noise as excessive or unusually loud, the following test or measurement may be applied:

(1) The noise shall be measured at a distance of at least 25 feet from a noise source in the public right-of-way, or if the noise source is located on private PROPERTY, or public PROPERTY other than a right-of-way, at least 25 feet from the PROPERTY line of the PROPERTY upon which the noise source is located.

(2) The noise shall be measured on a decibel or sound level meter of standard design or quality, operated on the A-weighted scale.

(3) A noise measured or registered as provided in this section of more than 60 decibels on the A-weighted scale in intensity shall be and is declared to be excessive and unusually loud, and is unlawful.

(4) A noise measured or registered as provided in this section from a motor vehicle above 88 decibels on the A-weighted scale shall be and is declared to be excessive and unusually loud, and is unlawful.

(b) Applications for a permit for relief from the noise level designated in this section as unlawful, on the basis of undue hardship, may be made to the CITY manager. Any permit granted by the CITY manager shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that such permit shall be effective. The CITY manager may grant

such a permit if he finds that additional time is necessary for the applicant to alter or modify his activity or operation to comply with this section; or that the activity, operation or noise source will be of temporary duration and cannot be accomplished without exceeding the noise level provided in this section; and that no other reasonable alternative is available to the applicant; and the CITY manager has prescribed such conditions or requirements deemed necessary to minimize adverse effects upon the community and the surrounding neighborhood.

(c) The requirements of this section shall not apply to any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency, or to those activities of a temporary duration, licensed and permitted by law, including but not limited to parades and fireworks displays.

(Ord. No. 2014-24, § 1, 9-3-2014)

EXHIBIT D

SOUTH CITY BEACH PARK OPERATING AGREEMENT EXPANDED POLYSTYRENE ADMINISTRATIVE POLICY

POLICIES CROSS REFERENCED:

I. PURPOSE/INTENT

The purpose of this Policy is to preserve and enhance the overall health and quality of the environment in the City of Hallandale Beach by restricting the use of City funds, by City employees, contractors and/or vendors, to purchase expanded polystyrene for use or sale on City property or in City facilities.

To read a more in-depth explanation of the rationale for this Policy refer to Exhibit I.

II. DEFINITIONS

For purposes of this Policy only, the following definitions shall apply:

- (1) City contractor means a contractor, vendor, lessee, concessionaire of the city, or operator of a city facility or property.
- (2) City facility includes, but is not limited to, any building, structure, park, or beach owned, operated or managed by the city.
- (3) City property includes, but is not limited to, any land, water, or air rights owned, operated or managed by the city.
- (4) Expanded polystyrene means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding and extrusion-blown molding (extruded foam polystyrene).
- (5) Expanded polystyrene food service articles means plates, bowls, cups, containers, to-go containers, lids, trays, coolers, ice chests and all similar articles that consist of expanded polystyrene.

III. POLICY/PROCEDURES

a) Policy Scope

City Funds

City funds may not be expended to purchase EPS food service articles for use or sale in City facilities or on City property. For the purposes of this Policy, food service articles include the following:

- Plates
- Bowls
- Cups
- Containers (including to-go boxes)
- Trays
- Lids

- Coolers
- Ice chests
- All similar items that consist of EPS

First and foremost, the City prioritizes the use of reusable food service items whenever possible. If disposable items must be used, the City encourages the use of unbleached, non-coated, fiber based food service articles that contain recycled content (paper, cardboard or other renewable alternatives). Recyclable items are encouraged, as are compostable products if the user has access to a composting facility.

City Contractors and Vendors

EPS food service articles will no longer be permitted to be sold or used in City facilities or on City properties by City contractors or vendors that are paid with City funds. However, the City will allow for an exemption to this Policy for pre-packaged food (filled and sealed prior to purchase by City contractor), containers used to store raw meat, pork, fish etc. The City Manager or his/her designee may wave this policy for a short period of time in the event of a natural or manmade disaster that requires employees to be involved in disaster recovery efforts and fed.

b) Effective Date

Prior to the creation of this Policy, City staff have been following an informal directive to avoid using City funds to purchase EPS food service articles.

This Policy is effective immediately upon signature by the City Manager.

c) Enforcement

City Funds

City employees that continually utilize City funds to purchase EPS food service articles may be subject to progressive discipline (verbal warning, written warning and suspension).

Employees that bring an EPS food service article into City facilities or on City property will be educated about the City's EPS Policy and asked to identify an alternative product/practice to avoid EPS use in the future (ex: bringing a reusable coffee mug to the establishment where they typically purchase coffee and request that the server pour coffee directly into their mug). It is important that City staff serve as positive role models for those that do business with and those that reside within the City.

The goal of the Policy is to create an atmosphere that celebrates and promotes positive environmental behavior change throughout the City. Fellow employees will be encouraged to inform one other of the benefits of this policy.

City Contractors and Vendors

This EPS Administrative Policy places restrictions on the direct use of City funds to purchase or use EPS food service articles by City contractors and vendors in City facilities or on City property. Upon written notice, the contractor or vendor must discontinue use or sale of EPS food

service articles within a reasonable period. Failure to do so within a reasonable amount of time may lead to discontinuation of the contract. This Policy does not have the authority to prohibit indirect use of City funds to purchase EPS food service articles (ex: City contractors bringing EPS food service articles to City property during a lunch break).

IV. ADDITIONAL INFORMATION, REQUIREMENTS & RESPONSIBILITIES

a) Fiscal Impact

This Policy is not expected to produce a large fiscal impact to the City; however, the Green Initiatives Coordinator will evaluate the annual impacts of the Policy.

b) Education

An educational campaign will accompany the implementation of this Policy. All City staff members will receive a flyer explaining the Policy. This flyer will also be posted on the City's webpage and social media pages. Procurement forms and documents, such as RFQs, RFPs and Bids, will be updated to include boilerplate language outlining the terms of this Policy. Furthermore, City contractors will be made aware of the Policy when they enter into a contract with the City.

This Policy does not address the use of EPS food service articles by permit holders, residents or private businesses. The State of Florida currently preempts EPS prohibitions of this scope. However, the City recognizes the value in educating these stakeholders about the contents of this Policy.

For a more in-depth explanation of the associated outreach and education campaign, please refer to the EPS Administrative Policy Outreach Plan (Exhibit II).

This Policy shall be kept current by the City's Green Initiatives Coordinator and approved by the City Manager.

Exhibit I

Expanded polystyrene (EPS), more commonly known as Styrofoam, is one of the most commonly used plastics in the world. Plastics are derived from fossil fuels, therefore are created by a non-renewable process. EPS is lightweight, durable and is relatively inexpensive (from a monetary standpoint) to produce. It is oftentimes used in packaging, but also functions as a building material and is used in electrical appliances and household items. EPS is also commonly used as a single-use, disposable food container due to its lightweight, cost effective and bacteria resistant nature. However, EPS poses a large negative impact to human health and the environment.

EPS is not easily recycled and is not accepted by most curbside materials recovery facilities (recycling centers that accept municipal recycling). It is estimated that EPS takes hundreds of years to break down in the landfill. Furthermore, EPS foam is 95% air and highly mobile. Therefore, many EPS containers can escape from garbage bins and enter the natural environment. EPS is not able to be broken down by the activity of living organisms (it is non-biodegradable),

but instead breaks down into smaller and smaller fragments as it is exposed to light (photodegradation). Data from the 2016 Hallandale Beach International Coastal Cleanup shows that Styrofoam fragments were the second most common form of pollution found on the City's beach. These small fragments are toxic to wildlife and studies are beginning to explore the possibility of these toxins making their way up the food chain, potentially negatively impacting human health (ex: a fish ingests EPS fragments and is then ingested by human).

The City Commission first considered banning the use of City funds to purchase EPS products and banning the use of EPS food service articles by its beach concessions contractors during the late spring/early summer of 2015. This Ordinance failed in large part due to the successful efforts of the EPS industry in advocating for the recyclability of EPS to the City Commission. However, since 2015 it has become clear that there is a distinct lack of successful, large scale EPS recycling services available to municipalities in South Florida.

Furthermore, the City Commission will consider adopting the City's first Sustainability Action Plan (SAP) during the Spring of 2018. The SAP includes language and projects that will guide the City down the path of embracing Sustainable Materials Management (SMM) in the future. The U.S. EPA defines SMM as, "an approach to serving human needs by using/reusing resources most productively and sustainably throughout their life cycles, from the point of resource extraction through material disposal. This

approach seeks to minimize the amount of materials involved and all the associated environmental impacts, as well as account for economic efficiency and social considerations".

SMM first prioritizes the minimization of materials. This is also known as source reduction. The solid waste hierarchy on the following page offers a visual depiction of this concept.

Moving forward, reducing the amount of materials used by the City is the top priority. Reuse is the second and recycling is the third most desirable option. Therefore, the argument for the recyclability of EPS will no longer fit within the City's vision moving forward after the adoption of the 2018 Sustainability Action Plan. The City realizes that achieving a source reduction of disposable EPS food service products from the outset negates the need to recycle this material in the future. This is the most environmentally friendly and desirable option moving forward.

Exhibit II

Expanded Polystyrene (EPS) Administrative Policy - Outreach Plan

Summary:

The purpose of this outreach plan is to organize and outline the avenues that the City of Hallandale Beach will utilize to accurately and effectively disseminate all information regarding the Expanded Polystyrene (EPS) Administrative Policy. The goal of this outreach plan is to reach all City of Hallandale Beach employees, constituents, contractors, and visitors to best ensure cooperation and understanding. The City recognizes the importance of educating these stakeholders about the harmful effects of EPS products, providing information about alternative and affordable materials, and discussing the benefits associated with this Policy as they relate to human health, wildlife, the environment, and economy. The goal is to focus on the positive aspects of the EPS Policy and make clear that its purpose is not to inconvenience City stakeholders, but instead is to encourage behavior change for the benefit of the City.

Target Audiences:

- City residents and stakeholders

- Internal audiences, including elected officials and City employees
- Governments, including state, county and other municipalities in the area that could be impacted by City operations
- City Contractors and Vendors

Marketing Goals:

- Provide vendors and contractors that receive City funds to perform work on City property with accurate and timely information about the EPS Administrative Policy.
- Clearly outline the timeline for the Policy roll-out, including the educational period and effective date.
- Increase general awareness about the harmful effects of EPS products and what City stakeholders can do to minimize their impact. Provide examples of alternative and affordable materials.
- Minimize resident and stakeholder concerns about the Policy through providing information about alternatives, and clearly stating the expectations of the Policy.
- Effectively communicate the Policy's expectations to all City employees. Emphasize the importance that employees have as role models and in setting a positive example by abiding by the Policy.
- Educate residents and stakeholders to the benefits in reduction of EPS products to humans, wildlife, the environment, and economy.
- Motivate and excite the public to embrace the actions laid out in the Policy not only in City facilities but also in their own homes.
- Utilize Collateral Material, Social Media, Banners and Signs, the TV Reach Program, the City's Website, and Email lists to distribute information.
- Emphasize the importance and prioritization of source reduction as the main goal of the Policy.
- Outline the enforcement mechanisms included in the Policy.

Marketing Strategy:

- Outline timeline for distributing Policy, educational flyers, educational workshops, etc. with the avenues listed below.
- Familiarize staff with the content of the Policy, and empower them to play an active role in educating constituents.
 - Ex. Encourage Parks & Recreation and Ocean Rescue employees to take an active role in educating patrons of the City parks/beaches about the negative impacts that EPS has on the environment.
- Ensure proper communication between existing and new Vendors/Contractors to make all parties aware of the City's Policy.
- Impacted departments will update documents with pertinent information to reflect changes.
 - Procurement: RFQs, RFPs, and Bids for contracted Vendors
- Utilize existing avenues to distribute information.

A. Collateral Material

- Two flyers with information on the new Policy will be created, one for internal employees, and one for the public.
- Flyers will be distributed to all Parks and Recreation facilities, the post office, library, the Hepburn Center, and PAL.

B. Social Media

- Facebook: Post flyers, fun facts, and updated information on the roll out of

the City's EPS Administrative Policy. Departments will be asked to share posts to increase the audience range. Include a segment on a Friday Facebook Live episode. Parks Page: (www.facebook.com/HBParksRec), City Page: (www.facebook.com/CityOfHallandaleBeach)

- 0 Twitter: Post tweets about the Policy. Parks: (www.twitter.com/HBParksRec), City: (www.twitter.com/MyHBeach)
- 0 Instagram: Post pictures of flyers to promote the Policy, as well as pictures of alternative materials, benefits that are occurring due to the reduction, and positive messages to increase participation.

C. Banners & Signs

- 0 Post approved snipe signs, a-frames, and banners at facilities to increase awareness of the City's Policy.

D. TV Reach Program

- 0 TV's are in the lobby of the Cultural Community Center, where there is high foot traffic. A TV is also located in Foster Park and OB Johnson Park lobbies.
- 0 Update Reach program to reflect flyers of the City Policy and acceptable alternate materials.

E. City Website

- 0 Website (www.hallandalebeachfl.gov, also accessible at www.cohb.org).
- 0 Any important dates regarding the Policy's roll-out will be posted on the master calendar of the City's Website.
- 0 Information regarding the Policy will be posted on relevant Departmental webpages.
 - Tu Procurement: Vendors
 - Tu Public Works: #KeepHBClean and Green Initiatives pages

F. Civic Send, Notify Me, and E-blasts

- 0 Utilize subscribed listservs to disseminate information.

G. Media Releases

- 0 The Public Information Officer (PIO) will handle all media releases related to this matter.

H. Hallandale Happenings

- 0 Hallandale Happenings is produced and distributed to each City residential address, four times each year. An article with information on the City's Policy will be featured.

I. Outreach to local schools

- 0 Workshops will be conducted at schools and outreach flyers will be distributed. Guidance will be offered to local schools if they wish to pursue a shift away from EPS on their own campuses

Responsibility:

The City's Green Initiatives Coordinator is responsible for implementing the Outreach Plan, with approval of the City Manager. The Green Initiatives Coordinator is also responsible for educating Directors of the changes and acting as a liaison for questions and information. The Directors will then distribute this information to supervisors and department personnel. It is the responsibility of all

City employees to abide by the Policy, communicate changes to their vendors and contractors, and to provide enforcement and education when the EPS Policy is violated. Cooperation from all City employees is necessary for this campaign to be successful.

EXHIBIT E

SOUTH CITY BEACH PARK OPERATING AGREEMENT HALLANDALE BEACH CODE OF ORDINANCE, CHAPTER 13, ARTICLE I, SECTION 13-10, PROHIBITION ON DISTRIBUTION, SALE OR USE OF PLASTIC BEVERAGE STRAWS

Sec. 13-10. Prohibition on distribution, sale or use of plastic beverage straws.

(a) Definitions. For purposes of this section, the following words, terms and phrases, including their respective derivatives have the following meanings:

Beverage means any liquid, including any slurry, frozen, semi-frozen, or other forms of liquids, intended for drinking.

Beverage provider means any business, organization, entity, group, or individual located within the city that offers beverages to the public for consumption.

Food provider means any person located within the city that is a retailer of prepared food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

Person means an individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

Plastic beverage straw means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. "Plastic beverage straw" includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

Special event permittee means a person who has obtained a special event permit from the city pursuant to section 32-702 of the City Code.

(b) Plastic beverage straws prohibited; exceptions.

(1) A plastic beverage straw shall not be sold, or distributed within city limits.

(2) A plastic beverage straw shall not be used on public beaches within city limits.

(3) Exceptions. This prohibition shall not apply to:

a. Pre-packaged drinks sold at commercial establishments.

b. Use by medical or dental facilities.

c. Use by the school district or county, state, or federal governmental entities.

d. Use during a locally declared emergency.

e. Use by individuals with a disability or other impairment requiring use of plastic straw.

(c) Non-plastic alternatives to plastic beverage straws. Nothing in this section precludes a food provider, beverage provider, special event permittee, or any person from using, providing, distributing, or selling non-plastic alternatives to plastic beverage straws, such as those made from paper, sugar cane, or bamboo, available to customers. Non-plastic alternative straws shall only be provided upon request.

(d) Enforcement; penalties.

(1) Following adoption, the city will engage in public education efforts related to the implementation of this section and provide assistance with identifying alternatives to plastic beverage straws.

(2) Beginning January 1, 2019, the city shall enforce all provisions of this section.

(3) Any person violating any section of this article is guilty of an infraction. The first violation shall be subject to a written warning or notice of violation. The second violation within a six-month period shall be subject to a fine not to exceed \$100.00. The third violation within a one-year period from the first shall be subject to a fine not to exceed \$200.00 and each subsequent violation within the one-year period shall be subject to a fine not to exceed \$500.00. All enforcement available to the city, including pursuant to Hallandale Beach Municipal Code chapter 9, may be issued for violation of this article.

(Ord. No. 2018-027, § 2, 9-17-2018)