

**HEARING DATE AND TIME: JUNE 13, 2019 AT 10:00 A.M. (EASTERN TIME)
OBJECTION DEADLINE DATE AND TIME: JUNE 6, 2019 AT 4:00 P.M. (EASTERN TIME)**

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Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
)	
Debtors.)	(Jointly Administered)

**NOTICE OF HEARING ON THIRD OMNIBUS MOTION OF DEBTORS
PURSUANT TO 11 U.S.C. §§ 105(a) AND 365(a) AND FED. R. BANKR. P. 6006
FOR ENTRY OF AN ORDER AUTHORIZING REJECTION OF
CERTAIN UNEXPIRED LEASES EFFECTIVE JUNE 29, 2019**

PLEASE TAKE NOTICE that a hearing on *Third Omnibus Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 365(a) and Fed. R. Bankr. P. 6006 for Entry of an Order Authorizing Rejection of Certain Executory Contracts and Unexpired Leases Effective June*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

29, 2019 (the “Motion”), will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), One Bowling Green, New York, New York 10004, on **June 13, 2019 at 10:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the “**Objections**”) must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Bankruptcy Court (a) by registered users of the Bankruptcy Court’s case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (b) the Chambers of the Honorable Sean H. Lane (“**Chambers**”), United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004; (c) the Debtors, Miami Metals I, Inc. f/k/a Republic Metals Refining Corporation, (Attn: Scott Avila); (d) the attorneys for the Debtors, Akerman LLP, 2001 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: John Mitchell, Esq.) and 98 Southeast Seventh Street, Suite 1100, Miami, FL 3313 (Attn: Andrea S. Hartley, Esq. and Katherine C. Fackler, Esq.); (e) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Shannon Scott, Esq.); (f) the attorneys for the Creditors’ Committee, if a committee is formed; (g) counsel to any other statutory committee appointed in the Chapter 11 Cases, and (h) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002 so as to be received no later than **June 6, 2019 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: May 20, 2019

AKERMAN LLP

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
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MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
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Debtors.)	(Jointly Administered)
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)	

THIRD OMNIBUS MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 365(a) AND FED. R. BANKR. P. 6006 FOR ENTRY OF AN ORDER AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES EFFECTIVE JUNE 29, 2019

THIS MOTION SEEKS TO REJECT CERTAIN UNEXPIRED LEASES. PARTIES RECEIVING THIS OMNIBUS MOTION SHOULD REVIEW IT IN ITS ENTIRETY TO SEE IF THEIR NAME(S) AND LEASE(S) APPEAR IN THE MOTION AND/OR THE ATTACHED EXHIBITS TO DETERMINE WHETHER THE RELIEF REQUESTED AFFECTS THEIR LEASE(S).

Miami Metals I, Inc., *et al.*, as debtors and debtors-in-possession (collectively the "Debtors") in the above-captioned Chapter 11 cases (the "Chapter 11 Cases"), move the Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

for entry of an Order in the form attached hereto as **Exhibit A** (the "Proposed Order"), pursuant to 11 U.S.C. §§ 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), authorizing the Debtors to reject certain unexpired leases listed and described on the schedule attached hereto as **Exhibit B** ("Rejected Leases Schedule"), including any amendments or modifications thereto (each, a "Rejected Lease" and, collectively, the "Rejected Leases" and the counterparty thereto, the "Counterparty"), effective as of June 29, 2019 (the "Rejection Effective Date"), and respectfully represent as follows in support of this motion (the "Motion"):

Background

1. On November 2, 2018, Republic Metals Refining Corporation, Republic Metals Corporation, and Republic Carbon Company, LLC each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), initiating these Chapter 11 Cases. On November 21, 2018, Republic High Tech Metals, LLC, RMC Diamonds, LLC, J&L Republic, LLC, R&R Metals, LLC, Republic Metals Trading (Shanghai) Co., Ltd., and Republic Trans Mexico Metals, S.R.L. filed voluntary petitions for relief under the Bankruptcy Code, initiating their Chapter 11 cases.

2. No trustee has been appointed in these cases. The Debtors continue to operate their businesses and manage their properties as Debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. On November 19, 2018, the United States Trustee gave notice of the appointment of an Official Committee of Unsecured Creditors ("Creditors Committee") [ECF No. 113].

3. Additional details regarding the Debtors and their assets, liabilities, and operations are set forth in the *Declaration of Scott Avila, as Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions* [ECF No. 2.]

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

6. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

8. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, Bankruptcy Rule 6006, and Local Rule 6006-1, the Debtors respectfully request authority to reject certain unexpired leases listed and described on the Rejected Leases Schedule attached hereto as **Exhibit B**, including any amendments or modifications thereto, effective as the Rejection Effective Date.

Rejected Leases

9. On February 21, 2019, the Bankruptcy Court entered an *Order (A) Approving Sale of Substantially All of Debtors' Assets "Free and Clear" of All Liens, Claims, Encumbrances and Other Interests, (B) Approving Assumption and Assignment of Executory*

Contracts and Unexpired Leases, and (C) Granting Related Relief [ECF No. 658] (the "Final Sale Order").

10. The Final Sale Order authorized, *inter alia*, the Debtors to sell substantially all of their assets to the winning bidder at the auction, Asahi Holdings, Inc. ("Asahi").

11. The Debtors have determined that the Rejected Leases, as identified on Exhibit B, should be rejected because the Debtors no longer need the related leased premises, and Asahi does not want to assume the Rejected Leases. The Debtors have determined that rejecting the Rejected Leases is in the best interests of the Debtors' estates and will eliminate unnecessary obligations of the Debtors.

Basis for Relief

12. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard applied to determine whether the rejection of an executory contract or unexpired lease should be authorized is the "business judgment" standard. *See In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009).

13. Courts defer to a debtor's business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (recognizing business judgment standard used to approve rejection of executory contracts or unexpired leases); *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996) (recognizing the business judgment standard used to approve rejection of executory contracts).

14. The business judgment standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. *See In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 1996) (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’”) (citation omitted); *In re Balco Equities Ltd, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) (“In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.”) (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994)). Further, under the business judgment standard “a debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of ‘bad faith, or whim or caprice.’” *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

15. Section 105(a) provides additional authority to the Court to grant the relief requested herein. Section 105(a) of the Bankruptcy Code provides that the court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 105(a) allows the bankruptcy court to “craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, effect the result the [Bankruptcy] Code was designed to obtain.” *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 235-36 (3d Cir. 2004) (citing *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003)).

16. The Debtors and Mr. Avila, as Chief Restructuring Officer, have reviewed the Rejected Leases and determined, in their sound business judgment, that the Rejected Leases are no longer necessary for, or beneficial to, the Debtors’ business, the Debtors no longer need the related leased premises and/or contract services, and Asahi does not intend to assume the

Rejected Leases. Therefore, maintaining the Rejected Leases will create an unnecessary and burdensome expense for the Debtors' estates. Failure to reject the Rejected Leases could result in the incurrence of additional administrative or other claims against the Debtors' estates that would constitute an unnecessary drain on the Debtors' limited assets. Accordingly, the Debtors submit that rejecting the Rejected Leases is a reasonable exercise of the Debtors' business judgment and will preserve assets of the estates to help maximize distributions to all creditors.

Bankruptcy Rule 6006 is Satisfied

15. Bankruptcy Rule 6006(a) provides that a "proceeding to assume, reject, or assign an executory contract or unexpired lease . . . is governed by Rule 9014." Fed. R. Bankr. P. 6006(a). In turn, Bankruptcy Rule 9014 states that "[i]n a contested matter . . . not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a).

16. Bankruptcy Rule 6006(e) allows a debtor to consolidate, in a single motion, requests for the authority to reject multiple executory contracts or unexpired leases that are among different parties, subject to Bankruptcy Rule 6006(f). *See* Fed. R. Bankr. P. 6006(e). Bankruptcy Rule 6006(f) requires, in part, that such omnibus motion must: (i) "state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion"; (ii) "list parties alphabetically and identify the corresponding contract or lease"; (iii) "be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases"; and (iv) "be limited to no more than 100 executory contracts or unexpired leases." Fed. R. Bankr. P. 6006(f).

17. Here, the Debtors have provided notice to the Counterparties to the Rejected Leases such that they can take appropriate action. In addition, this Motion provides a conspicuous notice that the parties receiving it should locate their names and leases, includes the Counterparties to the Rejected Leases in alphabetical order, and identifies the leases to be rejected. This Motion and the notice provided to the Lease Counterparties and other parties in interest are thus sufficient under Bankruptcy Rule 6006. To the extent the Motion does not comply with Bankruptcy Rule 6006, the Debtors respectfully request a waiver.

18. In view of the foregoing, the Debtors respectfully request that the Court approve the rejection of the Rejected Leases pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 in the manner requested herein.

Motion Practice

19. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Reservation of Rights

20. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; (iii) a waiver by the Debtors of their rights to dispute the amount of, basis for, or validity of any claim, including, but not limited to, any rejection damages claim; (iv) a waiver by the Debtors of their right to dispute or assert that the Rejected Leases were breached by the Counterparty and/or terminated prior to the date of entry of the Proposed Order; (v) a waiver or limitation of the Debtors' right to assert at a later date

that the Rejected Leases are not unexpired leases, as applicable; or (vi) a concession or evidence that any Rejected Lease has not expired, been terminated, or otherwise currently is not in full force and effect.

Notice

21. Notice of this Motion has been provided, in accordance with the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 55], to: (i) the Office of the U.S. Trustee; (ii) the holders of the 30 largest unsecured claims against the Debtors; (iii) the United States Attorney's Office for the Southern District of New York; (iv) the Internal Revenue Service; (v) each Counterparty; (vi) counsel to the Official Committee of Unsecured Creditors; (vii) counsel to the Debtors' prepetition senior secured lenders; and (vi) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

No Prior Request

22. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of an order in substantially the form attached hereto as **Exhibit A** (i) authorizing the Debtors to reject the Rejected Leases described on the Rejected Leases Schedule attached hereto as **Exhibit B**, and (ii) granting such other and further relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Dated: May 20, 2019

AKERMAN LLP

By: /s/Katherine C. Fackler

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Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
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Debtors.)	(Jointly Administered)
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**ORDER GRANTING THIRD OMNIBUS MOTION OF DEBTORS
PURSUANT TO 11 U.S.C. §§ 105(a) AND 365(a) AND FED. R. BANKR. P. 6006
FOR ENTRY OF AN ORDER AUTHORIZING REJECTION OF
CERTAIN UNEXPIRED LEASES EFFECTIVE JUNE 29, 2019**

Upon the Third Omnibus Motion (the "Motion") [ECF No. ____],² of Miami Metals I, Inc., *et al.*, the above-captioned Debtors and Debtors-in-Possession (collectively the "Debtors"), for entry of an order authorizing, pursuant to 11 U.S.C. §§ 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), the Debtors to reject certain unexpired leases listed and described on the schedule attached hereto as **Exhibit A** ("Rejected Leases Schedule"), including any amendments or modifications thereto (each, a "Rejected Lease" and, collectively, the "Rejected Leases" and the counterparty thereto, the "Counterparty"), effective as of June 30, 2019, all as more fully described in the Motion; and the Court having

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² Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having reviewed the Motion and the Schedule of Rejected Leases in Connection with the Motion; and no objections to the Motion having been filed; and it appearing that notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court on June 13, 2019; and after due deliberation and cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, the Debtors' rejection of the Rejected Leases described on **Exhibit A** attached hereto, as of the Rejection Effective Date (as defined in the Motion), is approved.
3. Each non-Debtor counterparty to a Rejected Lease shall have thirty (30) days following entry of this Order to file a claim for any damages arising out of or related to a Rejected Lease.
4. The Debtors are authorized to take any additional actions as are necessary or appropriate to implement and effectuate the rejections approved hereby.

5. The Motion satisfies Bankruptcy Rules 2002, 6006, and 9014.

6. This Court shall retain jurisdiction to hear and determine all matters arising from
or related to this Order.

Dated: New York, New York
June __, 2019

PROPOSED

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

REJECTED LEASES SCHEDULE

SCHEDULE OF REJECTED LEASES

No.	Lessor	Debtor(s)	Lease Description	Lease Date	Effective Rejection Date
1.	Richard Rubin-Lindjay Investments, LLC	Republic High Tech Metals, LLC	13001 N.W. 38th Avenue, Opa Locka, FL 33054 Warehouse Lease Agreement	December 17, 2017	June 30, 2019
2.	Richard Rubin-Lindjay Investments, LLC	Republic Metals Company	Portion of Parking Lot located at 13001 N.W. 38th Avenue, Opa Locka, FL 33054	Oral Lease	June 30, 2019