

EXHIBIT 2

DISCUSSION DRAFT 5/15/2020

Miami Beach Marina

Proposed Lease Amendment, Air Rights Sale, and Development Agreement with City of Miami Beach

I. Background.

- a. The property at issue is as follows: (1) the property known as the “Miami Beach Marina site” consisting of (y) an uplands area located at 300 - 344 Alton Road, Miami Beach, Florida, folios # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250 (“Area 1”) and (z) a submerged land area (Area 2,” collectively with Area 1, the “Existing Leased Premises”) immediately adjacent to Area 1 and leased by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“TIIF”) to the City of Miami Beach (the “City”) and the Miami Beach Redevelopment Agency (the “RDA”); (2) Lots 30 and 31 directly north of Area 1 (“Lots 30/31”); and (3) the Alton Road right of way adjacent to Area 1 and Lots 30/31 (the “ROW”).
- b. Area 1 and Lots 30/31 are designated for “Public Facility” use under the City’s Comprehensive Plan.
- c. Area 1 and Lots 30/31 are zoned “GU” Civic and Government use.
- d. Area 1 and Lots 30/31 are owned by the City.
- e. Miami Beach Marina Associates, Ltd. (MBM) is the long-term lessee of the Existing Leased Premises under a lease document originally executed June 24, 1983, and subsequently amended through April 15, 1998 (the “Existing Marina Lease”). The initial term of the Existing Marina Lease expires on January 1, 2022.
- f. An entity (the “Marina Lessee”) affiliated with MBM has requested a new lease (the “New Marina Lease”) with respect to the Existing Leased Premises and Lots 30/31, less and except the Air Rights Parcel (as such term is hereinafter defined), which Air Rights Parcel is within Area 1 (the Existing Leased Premises, as contracted to exclude the Air Rights Parcel and as expanded to include Lots 30/31, is hereinafter the “New Leased Premises,” Area 1, less the Air Rights Parcel, is hereinafter “Revised Area 1”), which New Marina Lease shall commence immediately upon expiration of the initial term of the Existing Marina Lease and shall continue for a period of 30 years thereafter, with an automatic renewal for

an additional 69 years (for a total term of 99 years) that shall be triggered upon closing under the Air Rights PSA (as such term is hereafter defined).

- g. After the City-wide referendum referenced in Section III.c. below, the Marina Lessee contemplates subleasing all or a portion of Revised Area 1 to an entity affiliated with the Air Rights Purchaser (the “Sublessee”), and upon completion of construction of the Replacement Facilities (as such term is hereafter defined) the Sublessee contemplates sub-subleasing to Marina Lessee storage, administrative and other spaces within the Upland Premises (as such term is hereafter defined) to be used in connection with the marina operation.
- h. Alton Road Mixed Use Investment, LLC (“ARMUI”) has requested that the City convey to ARMUI or an affiliate of ARMUI that is commonly controlled with ARMUI (hereinafter, the “Air Rights Purchaser”) a portion of the air space over Area 1 (the “Air Rights Parcel”), subject to the matters set forth in this term sheet.
- i. Marina Lessee and Air Rights Purchaser intend to develop and construct a mixed-use development within Area 1 containing an aggregate of 320,000 of “FAR,” to include the following elements:
 - 1. Approximately 60 residential units constructed within a residential building development within the Air Rights Parcel,
 - 2. Improvements within Revised Area 1 consisting of:
 - a. Approximately 45,000 square feet of enclosed, “under air” commercial/retail and office use uses, with certain parking spaces for the commercial/retail areas (the “Upland Premises”), and
 - b. Publicly accessible open green space, including a 1 acre at grade park (the “Park”), as described in section IV.c. below, within Revised Area 1 (collectively, the “Green Space”).

(hereinafter, the “Project”). The Project shall be further described through a series of actions and documents described below, including the New Marina Lease relating to the New Leased Premises (Section II); the agreement for purchase and sale of the Air Rights Parcel to be negotiated between the City and Air Rights Purchaser (Section III); applicable land use approvals (Section IV); and a Chapter 163, Florida Statutes development agreement, to be negotiated between the City, Marina Lessee and the Air Rights Purchaser (Section V).

- j. ARMUI has requested that the City vacate the west half of the ROW (consisting of approximately 25,500 square feet) and assign the FAR from such vacated ROW to the Expanded Leased Premises and the Air Rights Parcel.

II. New Marina Lease.

Marina Lessee has requested that the City and the RDA enter into the New Marina Lease as set forth herein. The New Marina Lease shall be executed and delivered concurrently with execution and delivery of the Development Agreement.

a. *Lease Term.*

The term shall commence immediately upon the expiration of the initial term of the Existing Marina Lease and shall continue for a period of 30 years thereafter (the "Initial Term"), with an automatic renewal for an additional 69 years (the "Extended Term"). The extension of the Initial Term to the Extended Term shall be triggered automatically, and without condition or any required action, upon closing under the Air Rights PSA. The City cannot guaranty that the submerged lands lease with TIIF regarding Area 2 (the "Submerged Lands Lease") shall be extended, but the City shall use its diligent, best efforts efforts to cause the term of the Submerged Land Lease to be extended periodically to coincide with the term of the New Marina Lease (as extended), or to cause a new submerged land lease to be issued to coincide with the term of the New Marina Lease (as extended). If the City is unable to obtain such extension of the Submerged Lands Lease or such new submerged lands lease, then the City shall use its diligent, best efforts to obtain alternative continuous and uninterrupted rights for the Marina Lessee to use and operate in Area 2 for the entire term of the New Marina Lease (as extended). If for any reason at any time during the term of the New Marina Lease the Submerged Lands Lease expires without renewal, or new submerged lands lease or alternative reasonably acceptable rights for Marina Lessee to use and operate in Area 2, then the rental payment under the New Marina Lease shall be the Annual Percentage Rent, and the Base Rent shall not apply.

b. *Rental Payment.* The rent shall be the greater of:

1. Base Rent as follows: (a) during the period of time commencing any time after the Air Rights Purchaser receives approval from the Design Review Board and the Marina Lessee provides the City with written notice, which written notice shall state that the reduced base minimum rent of \$1,000,000 shall thereafter be in effect, and ending (4) years after the date of such notice, and (b) at all other times during the term, \$1,500,000, in each case increased annually by 2% percent on the first anniversary after the expiration of such four (4) year period, or
2. Annual Percentage Rent of:
 - A. \$0.04 cents per gallon of gasoline or diesel;

B. 35% of all revenues received by the Marina Lessee from any parking facilities serving the New Leased Premises, including without limitation the parking garages (the “Parking Garages”) described under those certain parking garage leases with each of Murano Grande at Portofino Master Association, Inc., Murano Grande at Portofino Condominium Association, Inc., Icon Condominium Association, Inc., Yacht Club at Portofino Master Association, Inc. and TRG-SSDI, Ltd., as each has been amended, and the Replacement Parking Facility (as such term is hereafter defined).

C. 10% of all other Gross Receipts during each Lease Year throughout the Term of the New Marina Lease and any extensions thereof that exceed the then applicable thresholds for applicability of percentage rent. With respect to areas that are subleased, the rent paid by subtenants to the Marina Lessee (and not gross revenues of the subtenants) shall be the “Gross Receipts.” With respect to restaurant and retail areas within the Upland Premises that are operated by Marina Lessee or its affiliates, Gross Receipts shall be deemed to be fair market rent which would be charged to third-party tenants, which fair market rent may be calculated based upon the average rental rate for the balance of the restaurant and retail areas not operated by Marina Lessee or its affiliates, as applicable, within the Upland Premises. Marina Lessee shall submit periodic reports to the City with respect to Gross Receipts and pass through operating expenses, and the New Marina Lease will include the City’s mandatory Inspector General audit rights. Standard exclusions for Gross Receipts for reimbursement of expenses such as CAM, utilities, RE taxes, insurance, etc., shall be included in the New Marina Lease.

c. *Capital Improvements.* As additional consideration for the New Marina Lease, Marina Lessee will commit to a capital improvement program as follows provided that the Initial Term is extended to the Extended Term:

1. An investment of \$35 Million during the Initial Term (the “Area 2 Investment”), with no less than an aggregate of \$15 Million of the Area 2 Investment expended during the first 10 years of the term and no less than an aggregate of \$25 Million of the Area 2 Investment invested during the first 20 years of the term. The purpose of the Area 2 Investment is to implement scheduled capital improvements, improve the resiliency of Area 2, modernize the appearance and

infrastructure of Area 2, improve way finding and signage and otherwise retain market attractiveness to maximize the percentage rent return to the City with respect to the activities on Area 2, all as further described in the New Marina Lease. All such improvements and the phasing thereof shall be subject to the City's approval in accordance with the New Marina Lease and TIIF's approval to the extent such approval is required under the then applicable submerged lands lease between TIIF and the City regarding Area 2. Marina Lessee shall deliver to the City, as co-obligee, payment and performance bonds in form and substance acceptable to the City in connection with such improvements.

2. An investment of \$15 Million during the Initial Term (the "Additional Investment"), with no less than an aggregate of \$5 Million of the Additional Investment expended during the first 10 years of the term and no less than an aggregate of \$10 Million of the Additional Investment invested during the first 20 years of the term. The Additional Investment shall be expended on Area 2 for any reason and/or for any or all of the following reasons with respect to Revised Area 1: (i) to improve the resiliency of Revised Area 1, construct improvements to the Green Space that are in excess of the "Basic Park Standards" described on Schedule 1 attached hereto, (ii) any improvements, automated revenue systems or repair/maintenance to the Marina Parking Facilities and by this reference made a part hereof; and/or (iii) construct improvements within the Upland Premises that are in excess of the "White Box Standards" described on Schedule 1 attached hereto and by this reference made a part hereof. All such improvements and the phasing thereof shall be subject to the City's approval in accordance with the New Marina Lease and TIIF's approval to the extent such approval is required under the then applicable submerged lands lease between TIIF and the City regarding Area 2.
3. Marina Lessee shall deliver to the City, as co-obligee, payment and performance bonds in form and substance acceptable to the City in connection with such improvements.

d. New Leased Premises.

The demised premises shall be the New Leased Premises.

- e. Redevelopment.* [The applicability of this clause (e) should the air rights parcel sale not proceed is to be discussed. Marina Lessee is willing to commit to

improving the uplands even if the air parcel sale doesn't proceed, but not for the scope currently contemplated]

1. As part of the redevelopment of Revised Area 1, the Marina Lessee shall be authorized to demolish the existing improvements on Revised Area 1. It is intended that operations of the marina in Area 2 will continue during the period of redevelopment of Area 1, but may be disrupted or otherwise impacted in the ordinary course as the result of the development and construction operations on Area 1; provided, however, at all times during such construction, Marina Lessee shall cause access to the baywalk to remain open to and safe for use by the public.
2. Redevelopment of Revised Area 1 shall be the Green Space and approximately 45,000 SF of enclosed, "under air" replacement, revenue producing, upland facilities containing a mix of uses that may include marina and or neighborhood oriented retail uses, cafes and/or restaurants, office and similar uses, and any outdoor seating created in connection with such uses, but shall not include any free-standing outdoor bars, night clubs or other uses prohibited by the Existing Marina Lease (the "Replacement Facilities").
3. The Replacement Facilities shall also include approximately [100] parking spaces for use by the marina and Upland Premises to replace the existing spaces and shall include appropriate drop off and valet and service facilities necessary to serve the New Leased Premises (the "Replacement Parking Facility"). If guests and customers of the office and retail tenants of the Upland Premises park in the Parking Garages, then they shall be subject to charges at prevailing rates at City parking garages in the region, subject to a validation system and free passes to marina and commercial tenants commensurate with the use of a marina and commercial facilities as further defined in the Marina Lease.
4. The Marina Lessee shall remain responsible to the extent set forth in the Existing Marina Lease for the maintenance and operation of the parking facilities serving Revised Area 1, including without limitation, the Parking Garages and the Replacement Parking Facility, the baywalk, and the Replacement Facilities to be developed on Revised Area 1 including but not limited to the Green Space and access ways, in each case, in accordance with City-prescribed standards to be set forth in the New Marina Lease. If Marina Lessee fails to satisfy such standards, then Marina Lessee shall not be in default under the New Marina Lease but the City shall have the right to levy and the Marina

Lessee shall pay a fine to the City for each such failure or continuance of such failure.

5. The Marina Lessee shall be solely responsible for all costs and work associated with the Green Space improvements (including, without limitation, the design, permitting and construction), which improvements shall include, but not be limited to, resurfacing, drainage, landscaping, hardscaping, sidewalks, irrigation, signage, and lighting, and the design of such improvements shall be subject to the prior written approval of the City Manager or its designee.
6. The Marina Lessee shall be responsible for the safety, security and maintenance of the Green Space in accordance with City-prescribed standards to be set forth in the New Marina Lease. If Marina Lessee fails to satisfy such standards, then Marina Lessee shall not be in default under the New Marina Lease but the City shall have the right to levy and the Marina Lessee shall pay a fine to the City for each such failure or continuance of such failure.
7. The City, the Marina Lessee and Air Rights Purchaser shall enter into the REA (as such term is hereafter defined) concurrently with closing of the transactions under the Air Rights PSA.
8. The New Marina Lease shall define the first class marina standard and include updated maintenance and public appearance/cleanliness standards, including parking maintenance standards for striping. If Marina Lessee fails to satisfy such standards, then Marina Lessee shall not be in default under the New Marina Lease but the City shall have the right to levy and the Marina Lessee shall pay a fine to the City for each such failure or continuance of such failure.
9. The Green Space shall be subject to a perpetual public access easement, provided however, such easement shall reserve in favor of Marina Lessee rights to use the Green Space. The use and programming of the Park shall be set forth in the Development Agreement.
10. The Marina Lessee shall be required to commence and complete construction of the Replacement Facilities in accordance with deadlines reasonably determined by the City and further described in the New Marina Lease.
11. The Marina Lessee shall deliver to the City, as co-obligee, payment and performance bonds in form and substance acceptable to the City in connection with the completion of the Replacement Facilities.

12. Marina Lessee shall fully cooperate with the City in connection with the City's operation and maintenance of a mooring field in the general vicinity of the marina and landing area within the leased premises, which landing area may include, without limitation, public restrooms, bike station and docking location for dinghies.

f. Security Deposit.

City shall retain the existing security deposit under the Marina Lease and notwithstanding anything to the contrary set forth in the Marina Lease, all interest accrued on the security deposit shall become part of the security deposit.

g. City Boat Slips and Parking Spaces.

Marina Lessee, at no cost to the City, shall provide four (4) boat slips to accommodate vessels of up to forty (40) feet, as chosen by the Marina Lessee, for public purposes (e.g., police department, fire department) and four (4) parking spaces to accompany the use such boat slips within the nearest available parking facility.

h. Transfers.

Marina Lessee's rights to sublease, assign or otherwise transfer the New Marina Lease or its rights thereunder will be subject to specified criteria as further described in the New Marina Lease; provided, however the City approves a sublease to the Sublessee regarding any portion of Area 1 that includes the Upland Premises. The City shall provide a recognition agreement acceptable to the Sublessee with respect to such sublease

III. Air Rights Purchase.

- a. ARMUI has proposed a purchase price to the City in connection with the purchase and sale of the Air Rights Parcel at full Fair Market Value (hereinafter the "Purchase Price"), which shall be not less than \$50 Million.
- b. The City shall obtain two (2) independent appraisals of the Fair Market Value of the Air Rights Parcel, with such appraisers to be selected by the City Manager or his designee, at his sole and reasonable discretion, and paid for by Air Rights Purchaser, to determine the Purchase Price of the Air Rights Parcel based on its development potential as a 275,000 gross square feet residential building with approximately 60 dwelling units and other factors reasonably determined by the City.

- c. Concurrently with the execution and delivery of the Development Agreement, the City and Air Rights Purchaser shall enter into a purchase and sale agreement regarding the Air Rights Parcel (the “Air Rights PSA”), but acknowledge and agree that the Air Rights PSA will be subject to approval of a Ballot Question(s) by a majority vote of the voters in a City-wide referendum. The “Ballot Question(s)” are the following: the New Marina Lease, the sale of the Air Rights Parcel, and, if necessary, any clarification of the site FAR. The Air Rights PSA shall provide for an escrow deposit in the aggregate amount of \$5,000,000 (“PSA Deposit”) to be paid to a mutually acceptable escrow agent as follows: (1) \$1,000,000 within thirty (30) days after full execution of the Air Rights PSA; and (2) assuming the approval of the Ballot Questions pursuant to the City-wide referendum referenced in Section III.c. is successful, an additional \$4,000,000 within thirty (30) days after the City of Miami Beach Commission’s adoption of a resolution accepting the certification of the official results of the election with respect to such referendum (such date of certification is referred to herein as the “Effective Date”). The Air Rights PSA will include as exhibits thereto the forms of New Marina Lease and of the REA.
- d. The sale of Air Rights Parcel shall be subject to, and comply with, Ch. 82, Article II, Sections 82-36 through 82-40, of the City Code (entitled “Sale or Lease of Public Property”).
- e. City will convey fee simple interest to the Air Rights Parcel to Air Rights Purchaser upon Closing, at which time Air Rights Purchaser will pay to the City the Purchase Price for the Air Rights Parcel. The REA shall be executed and delivered concurrently with closing under the Air Rights PSA.
- f. The Closing will occur within ninety (90) days following satisfaction of the following conditions: (i) the issuance of all necessary final, non-appealable approvals for the Project from the City’s Design Review Board and Planning Board; and (ii) the City Commission’s adoption of the Comprehensive Plan and Zoning Code Changes described in Section IV below. Air Rights Purchaser shall file the applications for the approvals described in clause (i) of this Section III.f. not later than six (6) months after the Effective Date, and shall use commercially reasonable efforts to pursue such approvals. If Closing has not occurred on or before [] months after the Effective Date, then the Air Rights Purchaser may, at its option, elect to proceed to closing without reduction in the Purchase Price or terminate the Air Rights PSA and receive a refund of the PSA Deposit.
- g. Since the improvements to be constructed within the Air Rights Parcel shall not be located at ground level and instead shall be located above a portion of the retail components of the Project, at Closing a vertical subdivision shall be created and City, the Marina Lessee, Sublessee and Air Rights Purchaser shall enter into a

reciprocal easement and operating agreement (the “REA”) granting reciprocal easements, imposing covenants addressing the respective needs of the City, the Marina Lessee and Air Rights Purchaser, and, for avoidance of doubt, acknowledging that the rights with respect to the Air Rights Parcel shall survive termination/expiration of the New Marina Lease, which REA shall include, without limitation, the following:

1. Access, ingress and egress easements, including, without limitation, pedestrian, vehicular and service;
 2. Parking easements;
 3. Easements of structural support and foundation easements;
 4. Utility easements;
 5. Easements for all required back of house support facilities for each party; and
 6. Covenants for the long-term operation, maintenance and cost sharing of all applicable areas, and creation of association(s) or other entity through which such operation, maintenance and cost sharing shall occur.
- h. Air Rights Purchaser will pay all Closing costs (including, without limitation, the City’s outside counsel fees for the transaction to the extent set forth and as provided in that certain Reimbursement Agreement between _____ and the City, dated _____, 2020 (the “Reimbursement Agreement”)) related to the Air Rights PSA.
- i. **Except** for transfers to affiliates of the Air Rights Purchaser that are commonly controlled with the Air Rights Purchaser, Air Rights Purchaser shall not be entitled to assign or transfer its rights under the Air Rights PSA until payment in full to the City of the Purchase Price. Any such approved transferee of the Air Rights PSA shall assume all remaining obligations of the Air Rights Purchaser under the Air Rights PSA; provided, however, the Air Rights Purchaser shall not be released from its obligations thereunder. For avoidance of doubt, upon payment in full to the City of the Purchase Price, the Air Rights Purchaser may freely transfer all or any portion of the Air Rights Parcel and may assign (both collaterally and absolutely) any or all surviving provisions under the Air Rights PSA. Notwithstanding the foregoing to the contrary, the Development Agreement shall require that, until a temporary certificate of occupancy/completion is issued for the Replacement Facilities, one or more of the principals of Air Rights Purchaser,

in the aggregate, shall maintain control of the Air Rights Purchaser except for transfers due to lender foreclosures or deeds/assignments-in-lieu of foreclosure¹

- j. The City shall not be a party to or have any obligation to join in or consent to any declaration of condominium, declaration of covenants or other regime subdividing the Air Rights Parcel. For avoidance of doubt, the City shall be required to be a party to the REA.

k. ²

IV. City Actions.

- a. The parties acknowledge and agree that, as a condition to the Closing of the Air Rights Parcel purchase and execution and delivery of the REA, the City Commission, acting in its regulatory capacity, shall, at its discretion, consider certain actions to accommodate the proposed development plan and design for the Project (collectively, the "Project Approvals"). The Project Approvals include the following:

- 1. Comprehensive Plan Changes.

- A. An amendment to the 2040 Comprehensive Plan to modify the text of the Public Facility: Governmental Use (PF) designation.

- B. The following changes would be made to Policy RLU 1.1.17 of the Comprehensive Plan Resilient Land Use and Development Element:

Policy RLU 1.1.17 Public facility: Governmental uses (PF)

Purpose: To provide development opportunities for existing and new government uses, as well as public-private redevelopments.

Uses which may be permitted: Government uses, parking facilities, affordable or workforce housing, various types of commercial uses including business and professional offices, retail sales and service establishments, and eating and drinking establishments, and public-private marina redevelopments.

Public-private marina redevelopments shall include significant publicly accessible green open space and may permit the

¹ This tracks the 500 Alton concepts

² Consistent with 500, there should be no deadlines for the balance of the project (the condo).

following uses: Retail sales and service establishments; commercial uses, including business and professional offices; eating and drinking establishments; apartment residential uses; and recreational uses.

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy. However, in no case shall the intensity exceed a floor area ratio of 3.5.

2. Zoning Code Change.

An amendment to Section 142-698 and 142-699 of the Land Development Regulations to read as follows: ³

- b. The City's Design Review Board shall consider certain actions to accommodate the proposed development plan and design for the Project. Such actions include the following:
 - 1. Approval of the Project and the Green Space.
 - 2. Any associated variances for the Project and the Green Space.
- c. The application to the Design Review Board for Project approval shall include design plans for the Green Space. The Green Space shall consist of landscaping and hardscape improvements; lighting; irrigation for landscaping; outdoor seating and other outdoor furniture (if requested by the City); baywalk improvements; upgraded City-approved wayfinding and signage such as directional signage, access signage and similar signs (excluding private signage); and other accessory facilities. The Green Space shall be open to the public no later than the date a CO is issued for the Project.
- d. The City's Planning Board, shall consider approval of a conditional use for new construction of structures 50,000 square feet and over, as well as any other conditional uses necessary for the Project. Planning Board review is the first step in the process before Design Review Board review.

³ Proposed changes to CPS-4 height, setbacks and rooftop use to be provided

- e. The City Commission, Design Review Board and the Planning Board shall have no obligation to take any (or all) of the above stated actions; provided, however, that if the above stated City actions are not taken, then:
 - 1. Air Rights Purchaser may, at its discretion, elect to terminate the Development Agreement (as defined in Section V, below), without liability to Air Rights Purchaser or Marina Lessee. In the event of such termination, however, Air Rights Purchaser shall be responsible for any attorney's fees incurred by the City with respect to the Development Agreement up to the date of termination to the extent set forth and as provided in the Reimbursement Agreement; and
 - 2. Air Rights Purchaser may, at its discretion, elect to terminate the Air Rights PSA, without liability to Air Rights Purchaser. In the event of such termination, however, Air Rights Purchaser shall be responsible for any attorney's fees incurred by the City with respect to the Air Rights PSA, up to the date of termination, all to the extent set forth and as provided in the Reimbursement Agreement, and shall be entitled to the return of its PSA Deposit, less the amount of the City's reimbursable costs and expenses to the extent set forth and as provided in the Reimbursement Agreement, which shall be disbursed to the City, to the extent not previously paid by Air Rights Purchaser.

Any such Termination of the Air Rights PSA shall automatically terminate the Development Agreement, and any such termination of the Development Agreement shall automatically terminate the Air Rights PSA. In such event the Existing Marina Lease shall remain in effect, unmodified, until the expiration of the initial term of the Existing Marina Lease, and thereafter the New Marina Lease shall be in effect.

- f. Marina Lessee and Air Rights Purchaser will be responsible for submitting any required applications for development approvals, with City as co-applicant, if and as necessary, for the Project (i.e., City Commission, Design Review Board, and Planning Board approvals), and for securing any and all final, non-appealable development approvals and permits for the Project.

- V. **Development Agreement.** The above terms and other matters will be incorporated into a Development Agreement (the "Development Agreement"), which will include as an exhibit thereto the form of the Air Rights PSA (which, in turn, will include as exhibits thereto the forms of New Marina Lease and the REA), and which will provide for development of the Replacement Facilities, conveyance of the Air Rights Parcel and the New Marina Lease, to include, at a minimum, the following additional terms:

- a. Marina Lessee and Air Rights Purchaser will be responsible for submitting and obtaining any and all final, non-appealable development approvals for the Project (e.g., City Commission, Design Review Board, and Planning Board). Marina Lessee and Air Rights Purchaser acknowledge and agree that any such development approvals are subject to, and conditioned upon, approval by applicable development boards, in their sole and reasonable discretion.
- b. Except as to (i) involuntary transfers (as shall be defined in the Development Agreement and which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), (ii) mortgages and pledges in favor of senior and mezzanine lenders that are “Institutional Lenders” (as shall be defined in the Development Agreement), (iii) transfers of direct/indirect ownership provided the one or more of the principals of Marina Lessee and/or Air Rights Purchaser, in the aggregate, maintain control of the Marina Lessee and Air Rights Purchaser, as applicable, and (iv) transfers for estate planning purposes or as the result of death provided the transferor (or the applicable heir) retains control of the transferred interest, Marina Lessee and Air Rights Purchaser shall not be entitled to assign or transfer their respective rights under the Development Agreement until after the issuance of a temporary CO for the Replacement Facilities. Any transferee shall assume all remaining obligations of Marina Lessee under the Development Agreement, including without limitation, Marina Lessee’s obligation to improve the Green Space as set forth in Section III, above.
- c. The term of the Development Agreement shall be for eight (8) years from the Effective Date; provided, however, if a temporary CO is issued for the Replacement Facilities within years after the Effective Date, then the term of the Development Agreement shall automatically be extended (without the need of any notice to or consent of the City, or being subject to any public hearing) for an additional seventeen (17) years (so that the term of the Development Agreement shall be a total of twenty-five (25) years from the Effective Date). All time periods in the Development Agreement (and corresponding deadlines in the New Marina Lease) will be tolled due to force majeure (including, without limitation, strikes, lockouts, acts of God, and other causes beyond the control of either party), appeals or other judicial or administrative challenges to Project approvals, delays in obtaining permits from other governmental agencies and during the pendency of any Lawsuit (as hereinafter defined) and any unexpired appeal period thereof. In the event that a third party (unrelated or unaffiliated with the City, Air Rights Purchaser or the Marina Lessee) files any lawsuit, action or proceeding challenging the validity, issuance or execution, as applicable, of the sale of the Air Rights Parcel, the Air Rights PSA, the Project Approvals or the Development Agreement (each, a “Lawsuit”), then Marina Lessee and Air Rights Purchaser shall jointly and severally defend any such Lawsuit at their sole cost and expense using legal counsel reasonably acceptable to the City. Marina Lessee and Air Rights Purchaser further

shall jointly and severally indemnify and hold the City harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. The foregoing indemnity shall survive the expiration of earlier termination of the Air Rights PSA and the Development Agreement. If any such Lawsuit is commenced prior to the closing under the Air Rights PSA, then while such Lawsuit is pending, Air Rights Purchaser shall not be required to close under the Air Rights PSA; and the City shall not be required to effectuate the Air Rights Parcel transfer, until thirty (30) days after the Lawsuit has been completed and finally disposed of in a manner that sustains the validity of the challenged actions. If the Lawsuit is still pending for more than forty two (42) months after the Effective Date, then:

1. Air Rights Purchaser may elect to terminate the Air Rights PSA and its rights and obligations under the Development Agreement, without cause⁴, in which event Air Rights the PSA Deposit shall be refunded to Air Rights Purchaser, the Air Rights Parcel shall not be effectuated, Air Rights Purchaser shall be released from the Development Agreement, and the City and Air Rights Purchaser shall have no further obligation and/or liability to each other;
2. The City may elect to terminate the Air Rights PSA and partially terminate the Development Agreement with respect to the Air Rights Purchaser, without cause, in which event Air Rights the PSA Deposit shall be refunded to Air Rights Purchaser, the Air Rights Parcel shall not be effectuated, Air Rights Purchaser shall be released from the Development Agreement, and the City and Air Rights Purchaser shall have no further obligation and/or liability to each other; and
3. The Marina Lease shall remain in effect, unmodified.

VI. **Outside Counsel Review.** Marina Lessee and Air Rights Purchaser agree to reimburse the City for attorney's fees (which counsel shall be selected and approved by the City Attorney) incurred by the City for outside counsel's review and negotiation of the Development Agreement, the Air Rights PSA, and related agreements, to the extent set forth and as provided in that the Reimbursement Agreement.

⁴ Should development agreement survive with respect to the Replacement Facilities? This ties to the splitting up of the new lease into a Part I and a Part II. If Part I requires the Replacement Facilities, then the development agreement will need to survive