EXHIBIT 3

DRAFT

Development Agreement

2020-____
FOR THE DEVELOPMENT OF
THE MARINA PARK PROJECT

CITY JUNE 4, 2020 DRAFT SUBJECT TO REVIEW
AND REVISION AS PART OF ONGOING NEGOTIATIONS

DEVELOPMENT AGREEMENT
between
Marina Park, LLC and [_____]

and
CITY OF MIAMI BEACH, a
Florida municipal corporation

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is executed on the ____ day of _____, 2020, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation (the "City"), and MARINA PARK, LLC, a Florida limited liability company ("Residential Developer") and [_____, a _____] ("Commercial Retail Developer" and together with Residential Developer, collectively, jointly and severally, the "Developer").

RECITALS:

A. The City has a material interest in maximizing the performance of the Miami Beach Marina (as hereinafter defined in Section 1.3), enhancing the neighborhood by encouraging neighborhood-oriented commercial and retail spaces, improving the resiliency of such uses and providing substantial public green space in the City. To further those goals, the City desires to facilitate the development of the Marina Park Project (as hereinafter defined in Section 1.3) on real property owned by the City and described more fully in **Exhibit "B-1"** (the "Land"), and a portion of the Land with a maximum of [_____] square feet and a parcel of air located above the Land to be owned by the Residential Developer and described more fully on **Exhibit "B-2"** (collectively, the "Residential Parcel" and together with the Land, collectively, the "Development Site").[1]

B. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act set forth in Chapter 166 of the Florida Statutes, and the Miami Beach City Charter and Code of Ordinances (the "City Code"). The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required Governmental Approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

C. This Agreement is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" and Section 118-4 of the City's Code.

D. The City having fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that the Project (as hereinafter defined in Section 1.3) and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as each are hereinafter defined in Section 1.3) as of [_____], [___], 2020; and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with Developer, subject to the terms and conditions herein.[2]

[1] City to add revised and/or additional recitals based on City resolutions.

[2] Subject to update if amendments to Comprehensive Plan and LDRs not adopted prior to execution.

E. On [_____] [___], 2020, the Mayor and City Commission, by Resolution No. 2020-[_____], approved the execution of this Agreement.

NOW THEREFORE, for and in consideration of the foregoing, and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I
VOTER REFERENDUM, EFFECTIVE DATE AND DEFINITIONS

Section 1.1. Voter Referendum Requirement. The parties acknowledge and agree that, pursuant to Section 1.03(b)(1) of the City Code, the Marina Lease and the Purchase and Sale Agreement, each as hereinafter defined, and attached to this Agreement, and the rights and obligations therein are subject to and contingent upon the approval of this Agreement by vote of a majority of the voters voting thereon in a City-wide referendum on November 3, 2020 (the "2020 Referendum") or such later date in 2021 as further described in this Section (each, a "2021 Referendum" and together with the 2020 Referendum, each, a "Referendum"). In the event that the 2020 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, then Developer may, within 90 days after the date on which it is determined that the 2020 Referendum was not successful, request that the City Commission consider adopting a resolution calling for a special election for approval of the Agreement in a 2021 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of the Agreement in a 2021 Referendum or (b) within such ninety (90) day period, Developer either fails to so notify the City or notifies the City that it wishes to terminate this Agreement, then in any such event, this Agreement shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following Developer's request, the City Commission adopts a resolution calling for a 2021 Referendum and the 2021 Referendum is not successful, or if the ballot question is removed or election results are invalidated by a court of competent jurisdiction, in each case following the last date on which a 2021 Referendum occurred, this Agreement shall be deemed null and void and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

Section 1.2. Effective Date. If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Agreement shall be effective upon the City Commission's adoption of a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum ("Effective Date").

Section 1.3. Defined Terms. As used herein the term:

"Acceptable Owner" has the meaning ascribed to it in **Exhibit "A"**.

"Affiliate" means, regarding any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. When used in reference to Developer, for so long as Developer (or any of its Affiliates) holds an interest, directly or indirectly, in Developer, "Affiliate" shall include any Person Controlling, Controlled by, or under common Control with the Developer.

"Agreement" or "Development Agreement" means, collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated,

severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"Approval, Approve or Approved" means the written approval or consent of a Party, which unless otherwise specified herein by reference to "sole discretion" or words of similar effect, shall be commercially reasonable and made in good faith and with due diligence.

"Approved Plans" means the Plans and Specifications, as approved by the City Manager.

"Arbitrator" shall have the meaning ascribed to it in Section 7.10(a).

"Architect" means Cube 3 Studio, LLC, a Florida limited liability company.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as amended.

"Baywalk" means that certain baywalk extending from MacArthur Causeway to the north and [_____] to the south, an easement over which is granted to the City pursuant to the Baywalk Easements, and a portion of which baywalk is adjacent to the Land.

"Baywalk Easements" means, collectively, that certain Amended and Restated Grant of Baywalk Easement recorded on July 27, 1999 in Official Records Book 18713, Page 133 and that certain Grant of Easements for SSDI South Drop-Off Parking and Access Easement Agreement recorded on May 27, 1999 in Official Records Book 18626, Page 4514, each of the public records of Miami-Dade County, Florida.

"Budgeted Improvement Costs" means the estimated Improvement Costs as of the date hereof, as set forth in **Exhibit "C"**.

"Business Day" means a day other than a Saturday, a Sunday or a day on which the offices of the City, or national banks in Miami-Dade County, Florida are closed for business.

"Certificate of Occupancy" means a certificate of occupancy or certificate of completion, as applicable, for the buildings and structures on the Development Site, and shall include any such certificate designated as "Temporary" in nature, provided it allows for occupancy of the Commercial Retail Premises by all tenants thereof and occupancy of the Residential Parcel by all residents thereof. A Certificate of Occupancy may be issued separately for each of the Commercial Retail Premises and the Residential Parcel.

"City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Development Site acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement or in any way be deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" has the meaning ascribed to it in the recitals hereto.

"City Commission" shall mean the governing and legislative body of the City.

"City Delays" shall mean the number of days in which the City performs any obligation under Section 2.17 hereof in excess of the number of days set forth for such performance therein.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Agreement (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Agreement).

"City Mortgage" shall mean that certain mortgage which is a first lien on Residential Developer's fee interest in the Residential Parcel and all improvements thereon delivered by Residential Developer in favor of the City to secure the Residential Developer's obligations under the City Note, which City Mortgage is delivered to the City at the Closing in accordance with this Agreement and the Purchase and Sale Agreement.

"City Note" means that certain promissory note in the amount of $50,000,000.00 delivered by Residential Developer to the City at the Closing, which City Note shall be due and payable on or before the City Note Maturity Date.

"City Note Maturity Date" means not later than fifty-four (54) months after the Effective Date, subject to extension in accordance with any tolling pursuant to Section 7.4(b).

"City's Representative" has the meaning ascribed to it in Section 2.13(b).

"City ROW Area" means the parcel of property described on **Exhibit "D"** attached hereto.

"City Title Policy" means that certain loan title policy issued by First American Title Insurance Company (or other reputable national title insurance company reasonably acceptable to the City) in favor of the City in the amount of the City Note insuring the first lien priority of the City Mortgage, which City Title Policy shall be issued to the City at Residential Developer's sole cost and expense.

"Claims" means all claims, demands, actions, suits, causes of actions, proceedings, charges, complaints, orders, liability, damages, losses, costs and expenses of every kind and nature (including any attorneys' fees and costs of litigation).

"Closing" means the closing of the purchase and sale of the Residential Parcel in accordance with the Purchase and Sale Agreement.

"Commence Construction" or "Commencement of Construction" means the commencement of any work, other than preliminary site work (such as, environmental remediation and ancillary demolition), for construction of the Project in accordance with the Approved Plans.

"Commercial Retail Developer" means [_____, a _____], as the developer of the Commercial Retail Project. [Commercial Retail Developer is an affiliate of Marina Lessee and is the sublessee of the Commercial Retail Premises as approved by the City pursuant to the Marina Lease.]

"Commercial Retail Improvements" means any and all permanent buildings, structures, machinery, equipment and fixtures, which are to be erected or located on the Commercial Retail Premises, and as further described in Section 4.1(a) hereof.

"Commercial Retail Premises" means the parcel of real property described on **Exhibit "L"** attached hereto.

"Commercial Retail Project" means the development, design, construction and purchase of the Commercial Retail Improvements and their subsequent use and the completion of the Work relating to the Commercial Retail Improvements substantially in accordance with the Approved Plans, including (1) all associated infrastructure (including on-site parking and all supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description (including all landscaping, planting and other improvements of any type) now located or hereafter erected, constructed or placed upon the Commercial Retail Premises.

"Complete Construction" or "Completion of Construction" means the date Developer has completed the Project substantially in accordance with the requirements of the Approved Plans for the Project and all conditions of permits and regulatory agencies to obtain a Certificate of Occupancy for the Project have been satisfied, all applicable Governmental Authorities have issued a Certificate of Occupancy for the Project, and the Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by this Agreement, without material interference from incomplete or improperly completed Work.

"Comprehensive Plan" means the comprehensive plan which the City Commission has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

"Concurrency Requirements" shall have the meaning ascribed to it in Section 3.3.

"Construction Agreement(s)" means, collectively, the General Construction Contract and any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials, services or supplies, including those entered into by the Developer, with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

"Construction Completion Date" means the date that is forty-eight (48) months from Commencement of Construction.

"Construction Commencement Conditions" has the meaning ascribed to it in Section 2.11.

"Construction Lender" means the Institutional Lender selected by Developer to provide the Construction Loan.

"Construction Loan" means the loan to be provided by the Construction Lender to Developer for development and construction of the Projects.

"Construction Loan Commitment" means a financing commitment, term sheet or similar agreement by the Construction Lender that has been executed and delivered by and between Developer and the Construction Lender that confirms availability (subject to satisfaction of the terms and conditions

contained therein) of the Construction Loan to fund the construction of the Project in accordance with the requirements of this Agreement.

"Control," "Controlling" or "Controlled" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by Governmental Requirements or otherwise, or the power to elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to such Person (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to "major decision" consent or approval rights of limited partners, shareholders or members, as applicable). For avoidance of doubt, if a Person (for purposes of this definition, "Person A") cannot elect in excess of fifty percent (50%) of the directors, managers, general partners or other Persons exercising similar authority with respect to a Person (for purposes of this definition, "Person B") without the consent or approval of another Person or Persons, then Person A shall not be deemed to Control Person B.

"Default Rate" means an interest rate equal to five percent (5%) per annum above the highest annual prime rate (or base rate) published from time-to-time in The Wall Street Journal under the heading "Money Rates" or any successor heading as being the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) or if such rate is no longer published, then the highest annual rate charged from time-to-time at a large U.S. money center commercial bank, selected by the City, on short term, unsecured loans to its most creditworthy large corporate borrowers.

"Design Architect" means [Bjark Ingels Group, a _____].

"Developer" means, jointly, severally and collectively, Residential Developer and Commercial Retail Developer and the successors, assigns or transferees thereof expressly Approved or permitted by the terms and provisions of this Agreement. A certified copy of the articles of organization of the Residential Developer are attached hereto as **Exhibit "E-1"** and a certified copy of the articles of organization of the Commercial Retail Developer are attached hereto as **Exhibit "E-2"**.

"Development Arbitrator" shall have the meaning ascribed to it in Section 7.9(b).

"Development Dispute" means any dispute between Developer and City (acting in its proprietary capacity) arising prior to the Completion of Construction with respect to (i) whether a modification to the Project is a substantial deviation from the Approved Plans or a Prohibited Project Change requiring City's Approval pursuant to Section 2.3; (ii) any contention that City has unreasonably failed to Approve the Plans and Specifications or any modifications to the Approved Plans in accordance with this Agreement; (iii) any contention that City has unreasonably failed to Approve a General Contractor for the Project in accordance with Section 2.9(b); (iv) any disagreement as to permitted delays in the Construction Completion Date; or (v) any disagreement as to permitted delays in the Schedule of Performance pursuant to Section 2.8.

"Development Order" means any order granting, denying, or granting with conditions an application for a Development Permit.

"Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes.

"Development Site" means, collectively, the Land and the Residential Parcel.

"Effective Date" has the meaning ascribed to in Section 1.2.

"Engineer" means a duly qualified, insured and reputable engineer selected by Developer as the engineer of record for the Project and licensed to operate as an engineer in Miami-Dade County, Florida.

"Equity Commitment" means the commitment of Developer to contribute an amount in cash to pay Improvement Costs as may be necessary, at the time of determination, when combined with the proceeds available under the Construction Loan and Mezzanine Loan, if any, to maintain the Project In Balance.

"Event of Default" has the meaning ascribed to it in Section 7.1.

"Existing Improvements" means the existing buildings, structures, machinery, equipment and fixtures which are existing on the Land as of the date hereof.

"Existing Marina Lease" means that certain Marina Lease by and between the City, as lessor, and Existing Marina Lessee, as lessee, dated as of June 24, 1983, as subsequently amended through April 15, 1998.

"Existing Marina Lessee" means Miami Beach Marina Associates, Ltd., a Florida limited partnership.

"First Mortgage" means collectively, the Mortgages securing the Construction Loan, one of which is a first lien on Residential Developer's fee interest in the Residential Parcel and the other of which is a first lien on the Commercial Retail Developer's [sub]leasehold interest in the Commercial Retail Premises.

"First Mortgagee" means the Institutional Lender that is the holder of the First Mortgage, which shall be evidenced by, and the City shall be able to absolutely rely on, a title report current as of the time of any determination and prepared by a generally recognized title insurance company doing business in Miami-Dade County, Florida or upon a certificate of Developer, signed and verified by a Responsible Officer of Developer.

"Foreign Instrumentality" means a foreign (non-U.S.) government or agency thereof or a Person Controlled thereby.

"GAAP" means generally accepted accounting principles, as in effect from time to time, as promulgated by the Financial Accounting Standards Board, consistently applied or a system generally recognized in the United States as having replaced GAAP.

"General Construction Contract" means the construction contract between Developer and the General Contractor for the construction of the Project in accordance with the Approved Plans for the Project, within the contract time specified for completion of the Work, for a guaranteed maximum price that will not exceed the sum allocated for construction of the Work in the Budgeted Improvement Costs, and that includes provisions requiring a Performance Bond and Payment Bond and all other terms or conditions required under this Agreement.

"General Contractor" means the duly licensed general contractor(s) engaged by Developer for the construction of the Projects and completion of the Work.

"Governmental Approvals" means all permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority. Notwithstanding anything to the contrary in this Agreement, Developer retains its rights in accordance with applicable Governmental Requirements to challenge or appeal any denial of Governmental Approvals.

"Governmental Authority" means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them, with jurisdiction over the Development Site, the Improvements, or the Work.

"Governmental Requirements" means any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Development Site or the construction and operation of the Improvements. Notwithstanding anything to the contrary in this Agreement, Developer retains its right to challenge Governmental Requirements in accordance with all other applicable Governmental Requirements, including based on a constitutional objection that a Governmental Requirement violates Developer's constitutional rights regarding contracts.

"Green Space" means approximately [two acres] of publicly accessible open green space within the Commercial Retail Project, which shall include the Park Project [located on the Park Site] and landscaping and hardscape improvements, resurfacing, drainage, sidewalks, lighting, irrigation, 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 and incorporating all applicable Mandatory Project Design Elements.

"Hearing" has the meaning set forth in Section 7.9(c).

"Hearing Date" has the meaning set forth in Section 7.9(c).

"Improvement Costs" means all costs, fees and expenses incurred in connection with the design, permitting, development and construction of the Project;

"Improvements" means, collectively, the Residential Improvements and the Commercial Retail Improvements.

"In Balance" means, at any time in question, that the sum of (a) the then unfunded amount of the Construction Loan available to Developer for payment of costs of labor and materials to achieve Completion of Construction of the Project, plus (b) the then unfunded amount of the Mezzanine Loan, if any, available to Developer for the payment of costs of labor and materials to achieve Completion of Construction of the Project, plus (c) the then remaining balance to be funded under the Equity Commitment, plus (d) any additional cash amounts deposited with the First Mortgagee or any Mezzanine Lender by Developer in order to fund the difference, if any, between the sum of (a), (b) and (c) above and the then remaining Improvement Costs is adequate to pay all of the then remaining Improvements Costs that are reasonably likely to be incurred through Complete Construction of the Projects.

"Initial Purchase Price" means, collectively, $5,000,000 of the purchase price for the Residential Parcel paid by Residential Developer to the City at the Closing, $5,000,000 of the purchase price for the Residential Parcel paid by Residential Developer to the City on or before January 1, 2022 and $5,000,000 of the purchase price for the Residential Parcel paid by Residential Developer to the City on or before [September 30, 2022].

"Institutional Lender" means, any of the following entities that as of the date of closing of the financing (i) is not a Prohibited Person, (ii) with respect to those entities in clause (g), (h), (i) and (j) below is not a Foreign Instrumentality (other than any of the member countries of the European Union, each as existing as of the Effective Date, United Kingdom, Norway, Canada and Mexico and Persons Controlled by any of the foregoing countries) and (iii) (A) with respect to those entities in clauses (a) through (e) and (i) below providing loans to be secured by Leasehold Mortgages, has a net worth in excess of One Hundred Million Dollars ($100,000,000) (as adjusted by inflation over the Term pursuant to Section 11.19 hereof), (B) with respect to those entities in clauses (a) through (e) and (i) below providing Mezzanine Loans, has a net worth in excess of Fifty Million Dollars ($50,000,000) (as adjusted by inflation over the Term pursuant to Section 11.19 hereof) and (C) with respect to those entities in clauses (h) and (j) below has total assets (in name or under management) in excess of $500,000,000 (as adjusted by inflation over the Term pursuant to Section 11.19 hereof) for (h) and (j):

(a) any federal or state chartered commercial bank or national bank or any of its subsidiaries;

(b) any federal or state chartered savings and loan association, savings bank or trust company;

(c) any pension, retirement or welfare trust or fund, whose loans on real estate are regulated by state or federal laws;

(d) any public limited partnerships, public real estate investment trust or other public entity investing in commercial mortgage loans whose loans on real estate are regulated by state or federal laws;

(e) any licensed life insurance company in the business of making commercial mortgage loans or a subsidiary or affiliate of any such institution, in each case, whose loans on real estate are regulated by state or federal laws;

(f) any agent, designee, or nominee of an Institutional Lender that is an Affiliate (solely as described in clause (a) of the definition thereof) of any Institutional Lender or any other Person that is a subsidiary or an Affiliate (solely as described in clause (a) of the definition thereof) of an Institutional Lender;

(g) a governmental agency;

(h) an investment bank;

(i) a securitization trust that is rated by S&P, Fitch or Moody's (or any like-extant national rating agency);

(j) a hedge fund, opportunity fund, private debt fund, or like entity; and

(k) any other source of funding, public or private, which is otherwise Approved by the City Manager.

In the event of a syndicated loan, if fifty-one percent (51%) or more of the syndicate of lenders are Institutional Lenders, then the syndicated loan shall be deemed to be made by an Institutional Lender. City Manager's failure to notify Developer of any disapproval of any proposed lender under (k) above within twenty (20) days from its receipt of a notice by Developer shall be deemed to constitute the City Manager's conclusive Approval of any such proposed lender.

"Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes and shall also include the definition of "land development regulations" in Section 114-1 of the City Code.

"Land" has the meaning ascribed to it in the recitals hereto.

"Lawsuit" means any lawsuit, action or proceeding challenging the validity, issuance or execution, as applicable, of the sale of the Residential Parcel, the Purchase and Sale Agreement, the Project Approvals, the Project Amendments, the vacation of the City ROW Area or this Agreement or any challenge relating to any approval required under the City Code and/or the City Charter.

"LEED Status" means a certification by the U.S. Green Building Counsel's ("USGBC") Leadership in Energy and Environmental Design ("LEED") that the Project has satisfied all of the requirements associated with the then current USGBC Gold LEED certification.

"Liquid Assets" means (a) cash on hand or on deposit in any federal or state chartered commercial bank or national bank or any of its subsidiaries, (b) readily marketable securities, (c) readily marketable commercial paper rated A-1 by Standard & Poor's Corporation (or a similar rating by any similar organization that rates commercial paper), (d) certificates of deposit issued by commercial banks operating in the United States with maturities of one year or less, (e) money market mutual funds, and (f) the uncommitted amount of any available line(s) of credit.

"Mandatory Project Design Elements" means the design features, components or other elements of the Project to be developed by Developer as further described on **Exhibit "F"**.

"Marina Lawsuit" means any lawsuit, action or proceeding challenging the termination or expiration of the Existing Marina Lease, the termination or expiration of any sublease thereunder and/or the validity, execution or effectiveness of the Marina Lease or any tort or other Claim related to any of the foregoing.

"Marina Lease" means that certain Miami Beach Marina Lease by and between the City, as lessor, and Marina Lessee, as lessee, to be executed as of March 1, 2021, pursuant to which Marina Lessee has agreed to lease the Commercial Retail Premises from the City for a term commencing on January 1, 2022 and continuing for ninety (99) years and otherwise on the terms and conditions specified therein, in the form attached hereto as **Exhibit "G"**.

"Marina Lessee" means [_____, a _____], an affiliate of Suntex Marina Investors, LLC[3].

[3] Parties to discuss Terra ownership of Marina Lessee.

"Mezzanine Borrower" means the borrower under any Mezzanine Loan.

"Mezzanine Lender" means the Institutional Lender selected by Developer to provide the Mezzanine Loan and which is receiving a pledge of the equity interests in Developer.

"Mezzanine Loan" means a loan to be made by the Mezzanine Lender to the Mezzanine Borrower to provide financing for the Project, subordinate to the First Mortgage, which may be secured by a lien on the ownership interests in Developer.

"Mezzanine Loan Commitment" means a mezzanine financing commitment, term sheet or similar agreement by the Mezzanine Lender that has been executed and delivered by and between Developer and/or Mezzanine Borrower and the Mezzanine Lender that confirms the availability (subject to satisfaction of the terms and conditions contained therein) of the Mezzanine Loan.

"Miami Beach Marina" means, prior to the effectiveness of the Marina Lease, the marina operated by the Existing Marina Lessee pursuant to the Existing Marina Lease, and after the effectiveness of the Marina Lease, the marina operated by Marina Lessee pursuant to the Marina Lease.

"Mortgage" means a mortgage, including an assignment of rents, issues and profits from the Project, in favor of a Mortgagee, which constitutes a lien on the Project and secures the Construction Loan.

"Mortgagee" means an Institutional Lender that is the owner and holder of a Mortgage.

"MOT Plan" has the meaning ascribed to it in Section 2.11(j).

"Ownership and Control Requirement" has the meaning ascribed to it in Section 5.2.

"Park Project" means the at-grade public park located within the [Park Site][4], being not less than one acre and including the applicable Mandatory Project Design Elements.

["Park Site" means the parcel of real property described on **Exhibit "H"** attached hereto.]

"Parties" means City and Developer, and "Party" is a reference to either City or Developer, as the context may indicate or require.

"Performance Bond and Payment Bond" means a performance bond and a payment bond with regard to the General Construction Contract in the full amount of the guaranteed maximum price thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements and in form and content Approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney.

"Permitted Transfers" has the meaning ascribed to it in Section 5.3.

[4] Developer to confirm.

"Person" means any corporation, unincorporated association or business, limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, joint venture, or two or more persons having a joint or common economic interest, nominee, or other entity, or any individual (or estate of such individual); and shall include any Governmental Authority.

"Plans and Specifications" means the plans and specifications for the design, development and construction of the Project at the final design completion stage, which shall include fully detailed drawings showing the location, character, dimensions and details of the Work to be done, and specifications relating to the Project, comprising all of the written directions, provisions and requirements for the Project and describing the Work required to be performed, including detailed technical requirements as to labor, materials, supplies, equipment and standards to which such Work is to be performed, prepared by the Architect and Engineer, in each case, which shall be consistent with the Approved Project Concept Plan and Project Design.

"Prohibited Person" shall mean any of the following Persons: (A) any Person (whose operations are directed or controlled by an individual) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to United States laws concerning organized crime; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder to the extent the same are then effective: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea, Cuba and Venezuela); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) any Affiliate of any of the Persons described in paragraphs (A) through (D) above.

"Prohibited Project Changes" means any changes to the Approved Plans that result in any of the following except to the extent previously Approved in a writing executed by the City Manager and expressly providing that the City Manager is thereby Approving a Prohibited Project Change (which Approval may be granted or withheld by City Manager in his sole and absolute discretion), or which are required because of Governmental Requirements: (i) a failure of the Project to contain any of the Mandatory Project Design Elements, or a material change to the design thereof;(ii) a material change in the design or actual scope, appearance or quality of any of the Mandatory Project Design Elements; (iii) a material change in the massing of the development, including the orientation and general configuration of the tower structure or the size and configuration of the tower structure and podium design reflected in the Approved Plans, or (iii) any change that materially affects the façade of the Project Approved by the City, or otherwise

materially affects the exterior appearance of the Project or materially impairs the ability of the Project to function as intended.

"Project" or "Marina Park Project" means, collectively, the Residential Project and the Commercial Retail Project, including the Park Project, having an aggregate maximum floor area of approximately [320,000] square feet.

"Project Amendments" means, collectively, those certain amendments to the Comprehensive Plan and Land Development Regulations to (a) amend the Resilient Land Use and Development Element, Goal RLU1, objective RLU1.1, Policy RLU1.1.17, entitled "Public Facility: Governmental Uses (PF)" to permit public-private marina redevelopment and related uses on public property; and (b) amend the City's Land Development Regulations by creating Section 142-708, entitled, "Additional Regulations for Public-Private Marina Mixed-Use Redevelopments Incorporating City-owned Marina Property".

"Project Approvals" has the meaning ascribed to it in Section 3.2.

"Project Concept Plan" means the design of the Project prepared by the Design Architect, which Project Concept Plan has been approved by the City Commission in the form attached as hereto as **Exhibit "I"**.

"Project Design" means the final design for all elements of the Project, as approved by the City Manager, and based upon the approved Project Concept Plan and including the Mandatory Project Design Elements.

"Proposed Transferee" has the meaning ascribed to it in Section 7.10(a).

"Purchase and Sale Agreement" means that certain Purchase and Sale Agreement by and between the City and Residential Developer dated as of the Effective Date pursuant to which the City agrees to sell and the Residential Developer agrees to purchase the Residential Parcel, the form of which is attached hereto as **Exhibit "J"**.

"Reciprocal Easement Agreement" means that certain reciprocal easement and operating agreement to be executed as of March 1, 2021 by and among the City, Marina Lessee and the Residential Developer substantially in the form of **Exhibit "K"** attached to the Purchase and Sale Agreement.

"Residential Developer" means Marina Park, LLC, a Florida limited liability company, as the developer of the Residential Project.

"Residential Improvements" means any and all permanent buildings, structures, machinery, equipment and fixtures, which are to be erected or located on the Residential Parcel, and as further described in Section 4.1(b) hereof.

"Residential Parcel" has the meaning ascribed to it in the recitals hereto.

"Residential Project" means the development, design, construction and purchase of the Residential Improvements and the completion of the Work relating to the Residential Improvements substantially in accordance with the Approved Plans, including (1) all associated infrastructure (including on-site parking, if any, and all supporting facilities and amenities) and (2) the installation of other improvements and appurtenances of every kind and description now located or hereafter erected, constructed or placed upon the Residential Parcel.

"Responsible Officer" means any executive officer or manager of Developer responsible for the administration of the obligations of Developer in respect of this Agreement.

"Schedule of Performance" has the meaning ascribed to it in Section 2.11(f).

"Section," "Subsection," "Paragraph," "Subparagraph," "Clause," or "Subclause" followed by a number or letter means the section, subsection, paragraph, subparagraph, clause or subclause of this Agreement so designated.

"Target Dates" means the following dates that have been targeted by Developer to achieve the following activities or events:

(a) "Target Commencement Date" means the date targeted for Commencement of Construction, which is [_____ (__)] months after the Effective Date, as such Target Date shall be reasonably extended for (i) an Unavoidable Delay; (ii) City Delays; and/or (iii) any Lawsuit, if applicable, each, in accordance with this Agreement.

(b) "Target Completion Date" means the date targeted for Completion of Construction, which date is [_____ (___)] months after Commencement of Construction, as such Target Date shall be reasonably extended for (i) an Unavoidable Delay; (ii) City Delays; and/or (iii) any Lawsuit, if applicable, each, in accordance with this Agreement.

"Term" has the meaning ascribed to it in Section 3.11.

"Transfer" means any sale, assignment or conveyance (including any sublease of the entire Commercial Retail Premises) or any other transaction or series of transactions in the nature of a sale, assignment or conveyance (including any sublease of the entire Commercial Retail Premises) of:

(a) the Project or any part thereof;

(b) Any legal or beneficial interest in the Project, or any part thereof;

(c) any direct or indirect legal or beneficial interest in Developer (including the syndication of tax benefits); or

any series of such Transfers that have the cumulative effect of a sale, transfer or conveyance (including any sublease of the entire Commercial Retail Premises) of any of the foregoing (a), (b) or (c).

"Unavoidable Delay" means a delay that (a) directly impacts the critical path activity delineated in the Schedule of Performance, (b) is beyond the reasonable control of such Party incurring the delay, and (c) is not due to a negligent or intentional act, error or omission of such Party. Subject to the foregoing criteria, "Unavoidable Delay" means any acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies, whether actual or threatened; orders of any civil or military authority; insurrections; riots; acts of terrorism; epidemics; pandemics; landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts and other natural disasters; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; or other similar extraordinary causes beyond the commercially reasonable

control of the Party claiming such inability, in each case, which prevent performance. "Unavoidable Delay" shall not include technological impossibility, failure of equipment supplied by Developer or Contractor, receipt of and incorporation of defective materials into the Work, shortage of funds, failure of suppliers to deliver equipment and materials except where such failure is itself the result of an Unavoidable Delay, or failure of Developer or Contractor to secure the required permits for prosecution of the Work. If two or more separate events of Unavoidable Delay are concurrent with each other, Developer shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Developer shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Unavoidable Delay are concurrent for two days, Developer shall only receive an extension of time, if at all, of a total of two days, and not four days. In no event shall (i) any Party's financial condition constitute an "Unavoidable Delay" with respect to such Party, (ii) nor shall any delay arising from a Party's default under this Agreement, the General Construction Contract or any other construction agreements, constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder.

"Work" means the design, permitting, development and construction of the Project in accordance with the Approved Plans, including all design, architectural, engineering and other professional services, demolition and construction services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, storage, insurance, bonds, permits and conditions thereof, zoning approvals, changes required to comply with building codes and Governmental Approvals, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the demolition of existing structures and other preparatory or remediation work on the Residential Parcel and Commercial Retail Premises, as applicable; utility relocations, installations, hook-ups or other infrastructure as may be required to make the Residential Parcel and Commercial Retail Premises, as applicable, suitable for the use of the Project; total design, construction, installation, furnishing, equipping, and functioning of the Residential Improvements and the Commercial Retail Improvements and together with all additional, collateral and incidental items, work and services required for completion of the Project (including all such items, work and services as are necessary to provide fully functional and functioning Residential Improvements and Commercial Retail Improvements).

Section 1.4. Exhibits. If any exhibit to this Agreement conflicts with the body of this Agreement, the body of this Agreement shall govern.

Section 1.5. Interpretation. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as appropriate. The words "herein," "hereof," "hereunder," "hereinafter," and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection hereof. The terms "include" and "including" and words of similar import shall each be construed as if followed by the phrase "without limitation". This Agreement will be interpreted without interpreting any provision in favor of or against either party by reason of the drafting of such provision.

ARTICLE II
DEVELOPMENT OF THE PROJECT

Section 2.1. Development and Conformity of Plans.

(a) Developer shall be responsible for preparing all Plans and Specifications for the Project. The Plans and Specifications shall conform in all material respects to the approved Project Concept Plan and Project Design;

(b) Notwithstanding any other provision or term of this Agreement or any Exhibit hereto, the Approved Plans and all work by Developer regarding the Project shall conform to the City Code, the Florida Building Code and all other Governmental Requirements and, to the extent consistent with the above, the provisions of this Agreement.

Section 2.2. **Plans and Specifications**. Promptly following issuance of the Project Approvals, Developer shall prepare the Plans and Specifications and shall submit the same for review by the City Manager. The Plans and Specifications shall be submitted to the City Manager within [_____ (___)] days after the issuance of the Project Approvals. The City Manager shall review the Plans and Specifications solely for consistency with the Project Concept Plan and Project Design, as the same have been modified by the Design Review Board and/or Planning Board, as applicable. If the Plans and Specifications are inconsistent with the Project Concept Plan and Project Design, as so modified, if applicable, the City Manager shall notify Developer of same and Developer, at Developer's sole cost and expense, shall cause the Plans and Specifications to be revised to be consistent with the Project Concept Plan and the Project Design. If the Plans and Specifications are consistent with the Project Concept Plan and the Project Design, the City Manager shall approve the Plans and Specifications and such approved Plans and Specifications shall become the Approved Plans for all purposes hereof.

Section 2.3. **Approved Plans**. The City shall have the right to Approve, in its sole discretion, (x) any substantial deviation of the Project from the Approved Plans therefor and (y) any Prohibited Project Changes. Notwithstanding any Approval provided pursuant to this Section 2.3, Developer shall be solely responsible for obtaining all required final, non-appealable Governmental Approvals as more fully set forth in this Article II and in Article III of this Agreement. Any Approval of the Approved Plans or any component thereof by the City shall be for its own benefit in its proprietary capacity as the owner of the Land and shall not be deemed to mean, and the City, in such proprietary capacity, makes no representation, that such Approved Plans comply with all applicable Governmental Approvals and Governmental Requirements.

(a) Developer shall submit to the City Manager, prior to Commencement of Construction, any proposed modification to the Approved Plans for the City Manager's determination of whether such modifications include any substantial deviation of the Project from the Approved Plans therefor or Prohibited Project Changes. Modifications to the Approved Plans shall be indicated by "ballooning," highlighting, blacklining or describing such modifications in writing in reasonable detail in an accompanying memorandum. The City shall not be responsible for, and shall not be deemed to have Approved, any modification to the Approved Plans that is not indicated as required by this Section 2.3.

(b) Within twenty-one (21) days of receipt of any proposed modifications to the Approved Plans, the City Manager shall notify Developer, in writing, that he approves such modifications, or the basis for any disapproval of any substantial deviation of the Project from the Approved Plans therefor or Prohibited Project Change; provided, however, that the City shall not disapprove any material modification necessitated by Governmental Requirements. City's failure to notify Developer of any disapproval within such twenty-one (21) day period shall be deemed to constitute the City's conclusive Approval of the proposed modifications to the Approved Plans. The Approved Plans, as amended by such Approved modifications, shall thereafter be the Approved Plans referred to herein.

(c) If the City disapproves of any modification pursuant to this Section 2.3, then Developer shall, at its election, either (x) submit City's disapproval to expedited arbitration pursuant to Section 7.9 of this Agreement, or (y) within thirty (30) days after receiving the City's disapproval notice, submit revised proposed modifications to the Approved Plans for City's review and Approval as provided in this Section 2.3, provided that the time period for approval or disapproval shall be fifteen (15) days.

(d) At any time during the design development phase of the Project, Developer may (but shall not be required to) submit to the City Manager any proposed modifications to the Approved Plans for City's review and Approval pursuant to this Section 2.3, so as to mitigate or avoid any potential delays to the Schedule of Performance as a result of disputes regarding the final proposed Approved Plans.

Section 2.4. Developer's Project Obligations. Subject to the terms hereof, Developer is obligated to and shall (i) design, permit, and construct, in a good and workmanlike manner, and at its sole cost and expense, the Project in all material respects in accordance with and subject to all of the terms and provisions of this Agreement and to Complete Construction thereof by the Construction Completion Date, (ii) obtain a certificate of the LEED Status in accordance with Section 133-6 of the City Code and provide reasonable evidence of such certification to City within a reasonable period following the Construction Completion Date and (iii) to maintain, repair and reconstruct, as applicable, at its sole cost and expense during the Term, the Project in accordance with and subject to all of the terms and provisions of this Agreement.

Section 2.5. Payment of Project Costs.

(a) As between Developer and the City, Developer shall bear and be solely responsible for all costs and expenses related to the design, permitting and construction of the Work, the Project and its subsequent use, including the following:

(i) Developer's land use approvals, development fees, and permit fees for the design, construction, and subsequent use of the Project;

(ii) Developer's design and construction of the Project;

(iii) Developer's financing, construction bonding and insurance, building permits, utility installations and/or hook-ups or other infrastructure, as may be required to make the Development Site suitable for the Project;

(iv) Developer's consultants, accountants, financing charges, legal fees, furnishings, equipment, and other personal property of the Developer; and

(v) all other Developer direct or indirect costs associated with the approvals, design, construction, and financing of the Improvements, and their subsequent use.

(b) Developer acknowledges that the City shall have no maintenance responsibility for any of the Development Site and Improvements, and utilities and infrastructure to be constructed by Developer.

(c) Developer shall be exclusively responsible for all matters relating to underground utility lines and facilities, including locating, relocating and/or removal, as necessary. Under no circumstances

shall City be responsible for paying the cost of, or otherwise reimbursing Developer for, relocation, removal, or payment of charges to utility companies for, any utility lines or facilities lying on, under, or around the Development Site. City shall provide reasonable cooperation and assistance to Developer in the resolution of issues associated with existing underground utilities. Developer shall not remove, disturb, or relocate any existing utilities on the Development Site without the City Manager's prior written Approval.

Section 2.6. Financing Matters.

(a) Developer shall pay for all Improvement Costs from funds required to be provided under the Equity Commitment, the Construction Loan and the Mezzanine Loan, if any; provided that if the proceeds of the foregoing sources are not available or are inadequate for any reason, Developer shall be responsible to provide funds from such other sources as Developer may identify to pay all costs and expenses necessary to Complete Construction of the Project and cause the Construction Completion Date to occur in accordance herewith.

(b) Developer shall be solely responsible for obtaining the Construction Loan and the Mezzanine Loan, if any, for all completion guaranties required in connection with the Construction Loan and the Mezzanine Loan, if any, and for providing all collateral and other security, and otherwise satisfying all conditions thereof and covenants, agreements and obligations of the borrower thereunder. In no event shall City have any responsibility, obligation or liability with respect to the Construction Loan or the Mezzanine Loan, if any, and Developer shall reimburse City for all of City's third party costs and expenses (including attorneys' fees) reasonably incurred in connection with any requirements or requests of the Construction Lender in connection with the Construction Loan or the Mezzanine Lender in connection with the Mezzanine Loan, if any.

Section 2.7. No Claim for Value of Improvements. Developer shall have no claim against the City for the value of the Commercial Retail Improvements following any termination of the Marina Lease, whether at the natural expiration of the term of the Marina Lease or otherwise, except, with respect to any claims against the City acting in its governmental capacity, including any claims related to a condemnation by the City. The terms of this Section 2.7 will be expressly incorporated into the Marina Lease.

Section 2.8. Schedule of Performance. Developer shall prosecute completion of the Work substantially in accordance with the Approved Plans (with only such changes hereto that do not constitute Prohibited Project Changes, except as otherwise permitted or Approved pursuant to this Agreement), with all commercially reasonable diligence and in good-faith, in good and workmanlike manner, and shall use diligent, good-faith efforts to prosecute the Work in accordance with the Schedule of Performance, time being of the essence. The dates to be reflected in the Schedule of Performance, including the Target Dates, shall not be extended except for (i) an Unavoidable Delay in accordance with this Agreement, (ii) a City Delay and/or (iii) any Lawsuit; provided that the Construction Completion Date shall not be tolled for any Lawsuit. If the Parties disagree with respect to any permitted delays in the Schedule of Performance, such disagreement shall be resolved in accordance with Section 7.9 hereof.

(a) Developer shall endeavor, through the use of diligent, good-faith efforts, to cause the prosecution of the Work in accordance with the Target Dates, the Construction Completion Date and other dates to be set forth in the Schedule of Performance, but failure to meet the Target Dates or other date (other than the Construction Completion Date) to be set forth in the Schedule of Performance shall not be a default under this Agreement.

(b) As further to be delineated in the Schedule of Performance, Developer shall Complete Construction by the Construction Completion Date.

Section 2.9. Construction Obligations.

(a) Bonds. By no later than Commencement of Construction, Developer shall provide a Performance Bond and Payment Bond, with all premiums paid and in favor of Developer with an obligee rider in favor of the City and the First Mortgagee. Developer shall also provide City with a demolition bond or other form of financial instrument reasonably acceptable to City to assure the availability of funds for demolition or removal of the Existing Improvements and any uncompleted facility in the event Developer, after receipt of a written demand from City, fails to demolish and remove the Existing Improvements and/or any uncompleted Improvements following Developer's failure to substantially complete the Project as required herein.

(b) Approval of General Contractor. Developer's selection of the General Contractor shall be subject to the advance Approval of the City Manager, after consultation with the City Attorney, as to the qualifications and responsibility of the proposed General Contractor to perform the contract, based on the contractor's licensure, bonding capacity, financial capacity, history of compliance with laws, and satisfactory past performance on similar projects. Provided that the General Contractor proposed by Developer does not have a significant history of material non-compliance with the law, City agrees to Approve any General Contractor proposed by Developer that satisfies each of the following:

(i) Has a State of Florida Building and Business License;

(ii) Has completed at least one high-rise residential and retail mixed use project in the past five years under a construction contract that specified a guaranteed maximum price at or above $[_____]; and

(iii) Has total bonding capacity in excess of $[1 Billion] with at least $[250,000,000] available for a single project.

(c) Construction Agreement Required Clauses. All Construction Agreements shall include the provisions set forth on **Exhibit "S"** (or language substantially similar thereto which is approved in advance by the City Manager); provided all references to "Contractor" on **Exhibit "S"** shall refer to any contractor, subcontractor, consultant or other similar Person party to a Construction Agreement.

Section 2.10. Pre-Construction Period.

(a) Purchase and Sale Agreement. As of the Effective Date, the City and Residential Developer shall enter into the Purchase and Sale Agreement and the Closing shall occur on or before March [31], 2021, with time being of the essence. At the Closing, Residential Developer shall deliver to the City, in cash, $5,000,0000 of the Initial Purchase Price, the City Note, the City Mortgage and the City Title Policy, and shall record the City Mortgage in the public records of Miami-Dade County, Florida at Developer's sole cost and expense, including payment of all recording fees, documentary stamp taxes and intangible taxes.

(b) Marina Lease.

(i) As of March [31], 2021, the City and Marina Lessee shall enter into the Marina Lease, the term of which shall commence on January 1, 2022, with time being of the essence.

(ii) If the Marina Lease is successfully challenged in any Marina Lawsuit, Marina Lessee has diligently pursued and exhausted all appeals thereof in good faith, and the Marina Lease is terminated, voided or otherwise does not become effective as a result thereof, then Existing Marina Lessee conclusively shall be deemed to have exercised its option to renew the Existing Marina Lease as of March 31, 2021 and the first renewal term of the Existing Marina Lease conclusively shall be deemed to have commenced as of January 1, 2022. Provided that Marina Lessee has diligently pursued and exhausted all appeals of any Marina Lawsuit in good faith prior to such termination, voiding or ineffectiveness of the Marina Lease, the City shall retain the Initial Purchase Price; provided, however, that the City shall provide Existing Marina Lessee with a rent credit under the Existing Marina Lease to be agreed and memorialized in an amendment to the Existing Marina Lease entered into by and between the City and the Existing Marina Lessee promptly following such termination, voiding or ineffectiveness. In the event Marina Lessee has not diligently pursued and exhausted all appeals in good faith prior to such termination, voiding or ineffectiveness of the Marina Lease, the City shall be entitled to retain the entire Initial Purchase Price.

(iii) In the event of any Marina Lawsuit, Developer, Marina Lessee and Existing Marina Lessee shall defend any such Marina Lawsuit at their sole cost and expense using legal counsel reasonably acceptable to the City. Developer, Marina Lessee and Existing Marina Lessee, jointly and severally, shall further 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, relating to or resulting from any Marina Lawsuit. The terms of this paragraph shall be expressly incorporated into the Marina Lease and survive the expiration or any earlier termination of the Existing Marina Lease, the Marina Lease and this Agreement.

(iv) If there is no successful challenge to the Marina Lease, the Closing occurs but Residential Developer does not obtain the Project Approvals, the Marina Lease shall remain in effect, and the City shall retain the Initial Purchase Price; provided however, that the City shall provide Marina Lessee with a rent credit under the Marina Lease in the amount of $[_____] amortized over a term of 30 years and the City will re-convey the Residential Parcel (less that portion consisting of a portion of the Land) to Residential Developer in accordance with the Purchase and Sale Agreement.[5]

(v) Existing Marina Lessee hereby joins in and consents to this Agreement for purposes of acknowledging and confirming its agreement to the terms of this Section 2.10(b).

(c) Vacation. Prior to Commencement of Construction, the City shall vacate the City ROW Area pursuant to Section 82-37 of the City Code and Section 103(b)(4) of the City Charter, subject to satisfaction of the conditions of the City's vacation resolution, City 2020-[_____], approving, with conditions, the City's vacation of the City ROA Area.

[5] Parties to discuss if Closing does not occur under the Purchase and Sale Agreement.

Section 2.11. **Conditions Precedent to Commencement of Construction**. Prior to Commencement of Construction, the following conditions precedent shall have been satisfied (collectively, the "Construction Commencement Conditions"):

(a) Developer shall have delivered to the City, and received the City Manager's Approval of, the Approved Plans.

(b) Developer shall have entered into, and delivered to the City a duly executed copy of, the General Construction Contract (and all then existing change orders thereto) with a General Contractor Approved by the City Manager pursuant to Section 2.9(b) and reflecting a guaranteed maximum price for completion of the Improvements that does not exceed the Budgeted Improvement Costs;

(c) Developer shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of (A) Liquid Assets to fund the Equity Commitment, (B) the Mezzanine Loan Commitment, if any, and (C) the Construction Loan Commitment, all of which together demonstrate that the Project is In Balance;

(d) Developer shall have provided to City any changes to the Budgeted Improvement Costs, provided that City Manager shall not withhold its Approval so long as Developer has obtained and delivered to the City written evidence of the existence and availability of (A) Liquid Assets to fund the Equity Commitment, (B) the Mezzanine Loan Commitment, if any, and (C) the Construction Loan Commitment that demonstrate that the Project is In Balance;

(e) Developer shall have obtained, and shall have delivered to City a copy of, all Governmental Approvals necessary for the Commencement of Construction and for the demolition of all Existing Improvements;

(f) Developer shall have delivered to City, and City Manager shall have Approved, a schedule of performance for the Project setting forth the dates and times of delivery of the Project, including the Target Dates, the Outside Dates and other milestones for development and approval of the plans and specifications listed in Section 2.8, preparation and filing of applications for and obtaining all applicable Governmental Approvals described on **Exhibit "N"** for the Project [(other than the items under paragraph [12] of **Exhibit "N"**)] and the schedule for completion of the Work (the "Schedule of Performance"). City agrees that it shall not withhold Approval thereof so long as the same reflects Completion of Construction by the Construction Completion Date and Developer has provided reasonable evidence that such schedule is reasonable;

(g) Developer shall have presented evidence reasonably acceptable to the City that all insurance coverages required under this Agreement are in place;

(h) Developer shall have provided to the City reasonable evidence that the closing of the Construction Loan has occurred;

(i) the representations and warranties made by the Developer in this Agreement pursuant to Sections 4.2(a) and 5.2 remain true and correct in all material respects on and as of the date of Commencement of Construction;

(j) Developer shall have delivered to the City a maintenance of traffic plan for the staging of the Work during the construction period (the "MOT Plan"), which MOT Plan shall have been Approved by the City Manager and which will include minimal disruptions to Alton Road, subject only to closures for short time periods upon Approval by the City Manager as reasonably necessary to complete the Work;

(k) Developer shall have delivered to the City a parking and transportation plan for the off-site parking and transportation, which plan shall have been Approved by the City Manager and which may include various traffic mitigation options, including parking for construction workers, continued ingress and egress to Alton Road (subject to clause (j) above), the Miami Beach Marina, the parking garages used by guests of the Miami Beach Marina, the Baywalk and any neighboring properties.

(l) Developer shall have delivered to the City reasonably satisfactory evidence of the (a) termination of all subleases of the Existing Improvements and unconditional releases of the City from any and all Claims of all sublessees arising from or in connection with such subleases, or (b) amendment to all unterminated subleases evidencing the applicable sublessees' agreement to vacate the Existing Improvements prior to Commencement of Construction through Completion of Construction of the Project; provided, however, in the event any sublease of the Existing Improvements has not been so terminated or amended on or before Commencement of Construction, then Developer may nonetheless Commence Construction in accordance with and subject to the terms of this Agreement provided that, in such event, Developer hereby does and shall indemnify, defend and hold the City and its respective officers, employees, agents and representatives harmless from and against any and all Claims arising from or in connection with any such unterminated or unamended sublease, and promptly following the termination of any such sublease, Developer shall deliver to the City reasonably satisfactory evidence of such termination and an unconditional release of the City from any and all Claims of such sublessee.

(m) Marina Lessee and the City shall have entered into the Marina Lease and the term of the Marina Lease shall have commenced.

(n) Residential Developer and the City shall have closed on the purchase and sale of the Residential Parcel in accordance with the Purchase and Sale Agreement and Residential Developer shall have delivered to the City the entire purchase price under the Purchase and Sale Agreement and the City Note shall have been paid in full in cash. Subject to payment in full in cash of the City Note, the City will deliver a satisfaction of the City Mortgage, which Residential Developer will record in the public records of Miami-Dade County, Florida at its sole cost and expense.

(o) Developer and the City shall have entered into a temporary construction and access easement over and across the Park Site substantially in the form attached as **Exhibit "Q"** hereto granting Developer certain rights thereto for purposes of construction the Park Project.

Section 2.12. Construction Obligations. Prior to the Completion of Construction, Developer shall, or shall cause its General Contractor to:

(a) Perform and complete the Work with diligence and continuity;

(b) Select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;

(c) Furnish, erect, maintain and remove such construction plant and such temporary work as may be required; and be responsible for the safety, efficiency and adequacy of the plant, appliance and methods used and any damage which may result from failure, improper construction, maintenance or operation of such plant, appliances and methods;

(d) Provide all architectural and engineering services, scaffolding, hoists, or any temporary structures, light, heat, power, toilets and temporary connections, as well as all equipment, tools and materials and whatever else may be required for the proper performance of the Work;

(e) Order and have delivered all materials required for the Work and shall be responsible for all materials so delivered to remain in good condition;

(f) Maintain the Development Site in a clean and orderly manner at all times, and remove all paper, cartons and other debris from the Development Site;

(g) Erect, furnish and maintain a field office with a telephone at the Development Site during the period of construction in which a supervisor-level employee shall be on site during the performance of any Work in connection with the Project; and cause the General Contractor to require in each subcontract having a price in excess of $[5,000,000] (and to require each subcontractor to require in each sub-subcontract having a price in excess of $[5,000,000]) that such subcontractor (and sub-subcontractor) have on-site a supervisor-level employee at all times during the performance of any Work under such subcontract (and sub-subcontract);

(h) Protect all Work prior to its completion and acceptance;

(i) Restore and repair any properties adjacent and leading to the Development Site damaged as a result of construction of the Project, whether such properties are publicly or privately owned;

(j) Implement, and maintain in place at all times, a comprehensive hurricane and flood plan for the Development Site and the Work, and provide a copy of same to the City;

(k) Upon the issuance of a Certificate of Occupancy for the Project, deliver to the City, a copy of such Certificate of Occupancy, provided that if the Developer receives more than one Certificate of Occupancy for the Project and receives a Certificate of Occupancy for the Commercial Retail Project prior to receipt of a Certificate of Occupancy for the remainder of the Project, Developer shall deliver to the City a copy of such Certificate of Occupancy for the Commercial Retail Project promptly after receipt thereof;

(l) Upon Completion of Construction, deliver to the City as built drawings and plans and specifications of the Project;

(m) Upon Completion of Construction, deliver to the City, a copy of the final certificate of occupancy or certificate of completion, as applicable;

(n) Upon Completion of Construction, deliver to the City a certification of the Architect (certified to the City on the standard AIA certification form), that it has examined the Approved Plans and that, in its professional judgment, after diligent inquiry, Construction of the Project has been substantially

completed in accordance with the Approved Plans applicable thereto, and as constructed, the Improvements Comply with all applicable Governmental Requirements;

(o) Upon Completion of Construction, deliver to the City a Contractor's final affidavit in form and substance reasonably satisfactory to the City executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with construction of the Project, have been paid in full for all work performed or materials supplied in connection with construction of the Project and (ii) otherwise complying with all of the requirements under the Florida Construction Line Law, Chapter 713, Florida Statutes.

Notwithstanding any provision hereof to the contrary, (x) at no time during construction of the Project may Developer make any Prohibited Project Changes without the express, prior written Approval of City (which Approval may be granted or withheld by City in City's sole and absolute discretion) and (y) Developer shall perform and complete the Work in a manner that does not interfere with or affect ingress, egress or access to, or operations of, as applicable, Alton Road (subject to Section 2.11(j) above), the Miami Beach Marina, the parking garages used by guests of the Miami Beach Marina, the Baywalk or any neighboring properties. Developer shall cause the Baywalk to remain open and safe for use by the public throughout construction of the Project.

(p) **Completion of Construction**. Developer shall carry on any construction, maintenance or repair activity with diligence and dispatch and shall use diligent, good-faith efforts to complete the same in accordance with the Schedule of Performance. Developer shall not, except if an emergency exists (then only to the extent that the City can grant such an exception), carry on any construction, maintenance or repair activity in any easement area, including the Baywalk easement area, that interferes in any manner with the safety, use or enjoyment of the property encumbered by such easement.

Section 2.13. Progress of Construction/City's Representative.

(a) Developer shall keep the City apprised of Developer's progress regarding the Work, including Developer's progress towards meeting the Target Dates and Construction Completion Date set forth in the Schedule of Performance. Unless otherwise agreed by the parties, Developer shall deliver written reports of same not less than monthly; and

(b) The City may, from time-to-time, designate one or more employees or agents to be the City's representative ("City's Representative"), who may, during normal business hours, in a commercially reasonable manner, visit, inspect and monitor the Project, the materials to be used thereon or therein, contracts, records, plans, specifications and shop drawings relating thereto, whether kept at Developer's offices or at the Development Site or elsewhere, and the books, records, accounts and other financial and accounting records of Developer (which shall be kept at the address specified in Section 11.5) as often as may be reasonably requested. Further, City's Representative shall be advised of, and entitled to attend, meetings among Developer, Developer's representative and the General Contractor or any subset of this group. Developer will cooperate with the City to enable City's Representative to conduct such visits, inspections and appraisals. Developer shall make available to City's Representative for inspection, with commercially reasonable notice, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction. To the fullest extent permitted by law, City shall protect from disclosure any records that are confidential and exempt from disclosure under Florida law, provided, however, that nothing herein shall preclude the City or its employees from complying with the disclosure requirements of the Public

Records Act, and any such compliance shall not be deemed an event of default by the City under this Agreement. City shall use its good-faith, diligent efforts to provide timely written notice to Developer of any public records request seeking any records of Developer that may be within the City's custody, possession or control, to permit Developer the opportunity to seek to protect such information from disclosure.

Section 2.14. Delivery of Plans.

Promptly after completing the Work and Developer's receipt of a Certificate of Occupancy for the Work, Developer will deliver to the City a copy of the plans and specifications, including shop drawings, for the Improvements.

Section 2.15. Connection of Buildings to Utilities.

(a) Developer, at its sole cost and expense for the Development Site and in compliance with all Governmental Approvals and Governmental Requirements, shall install or cause to be installed all necessary connections between the Improvements, and the water, sanitary and storm drain mains and mechanical and electrical conduits whether or not owned by the City.

(b) Developer shall pay for the cost, if any, of locating, grounding and installing within the Development Site, as applicable, new facilities for sewer, water, electrical, and other utilities as needed to service the Project, and, at its sole cost and expense, will install or cause to be installed inside the property line of the Development Site, all necessary utility lines, with adequate capacity and the sizing of utility lines for the Project, as contemplated on the Approved Plans.

Section 2.16. Permits and Approvals. Developer shall secure and pay for all Governmental Approvals for the Work and shall pay any and all fees and charges due to and collected by the City or any other Governmental Authority connected with issuing such Governmental Approvals, if any.

Section 2.17. City and Developer to Join in Certain Actions. Within twenty-one (21) days after receiving a written request from Developer that is consistent with all Governmental Requirements and in accordance with this Agreement, the City, at Developer's sole cost and expense (including City's reasonable attorneys' fees in reviewing any agreements), shall join Developer when required by law in any and all applications and agreements for Governmental Approvals as may be commercially reasonably necessary for developing and constructing the Project, which applications and agreements are necessary because City is the fee owner of the Land and/or the properties surrounding the Land, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement and operating agreements, and demolition permits and applications for Design Review Board approval for buildings located on the Development Site. Developer shall pay all fees and charges for all such applications. Failure of the City to perform as requested within such twenty-one (21) day period shall be deemed a City Delay for the number of days of delay beyond such twenty-one (21) day period.

Section 2.18. Compliance with Laws. Developer will comply with any Governmental Requirements in constructing and operating the Project.

Section 2.19. Art in Public Places. Developer shall comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall

contribute to the City's Art in Public Places fund the total of 2% of the "construction cost," as such term is defined in Section 82-537 of the City Code, of the Commercial Retail Project no later than date of execution of the General Contract by Developer and the General Contractor, as required by the City Code.

Section 2.20. **Inspector General**. This Agreement is subject to the Inspector General Audit Rights as provided on **Exhibit "U"** attached hereto.

ARTICLE III
LAND USES AND DEVELOPMENT OBLIGATIONS

Section 3.1. **Covenant Regarding Land Uses**. Developer agrees and covenants to devote the Project only to the uses specified in this Agreement and to be bound by and comply in all material respects with all of the provisions and conditions of this Agreement. In addition, and except as hereinafter set forth, Developer shall not have the right to seek or obtain different uses or a change in such uses either by requesting a zoning change or by court or administrative action without first obtaining the City's Approval, which Approval may be granted or denied in the City's sole discretion.

Section 3.2. **Applications for Development Approvals and Development Permits**. Developer acknowledges that development of the Project will require design review approval by the City's Design Review Board and conditional use approval by the City's Planning Board (collectively, the "Project Approvals"). Within six (6) months after the Effective Date, Developer, at Developer's sole cost, shall prepare and file with the City complete applications requesting the Project Approvals and pay all applicable application fees and expenses. Developer shall diligently pursue the Project Approvals in good faith, consistent with best industry practices. Promptly following the Effective Date, Developer will initiate and diligently pursue in good faith, consistent with best industry practices, any other applications for Development Orders and Development Permits that may be required in connection with the Project. Developer shall be solely responsible for obtaining all final, non-appealable Project Approvals, Development Orders and Development Permits for the Project. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Project Approvals, Development Permits or Development Orders.

Section 3.3. **Concurrency**. Developer shall be solely responsible for obtaining all land use permits, including all permits and approvals required pursuant to Section 163.3180, Florida Statutes, and Chapter 122, City Code, with respect to mobility fees and concurrency requirements for sanitary sewer, solid waste, drainage, potable water, recreation and open space, and public schools (the "Concurrency Requirements"). Prior to applying for its building permit for the Project, Developer shall apply for preliminary concurrency determinations for the Project with the applicable review departments, as defined in Section 122-4 of the City Code. Developer shall diligently and in good faith comply with the all of the requirements of Section 122-6 of the City Code to obtain an estimate of concurrency mitigation and mobility fees, and if the applicable review department determines that the required public facilities are or will be available to serve the proposed development, the applicable review department shall issue a concurrency determination impact of no less than [36] months from the date of issuance of the determination, which shall be specified on the face of the concurrency determination. In the event the issuance of a concurrency determination is based on an approved mitigation program, such determination shall be expressly conditioned upon compliance with such program. Provided that (i) a concurrency determination impact certificate is issued, (ii) the Design Review Board approves a Development Order or Development Orders for the Project and such order(s) becomes final (after all appeal periods have

expired without an appeal being filed, or if filed, resolved favorably for Developer), and (iii) Developer pays applicable mitigation fees (including impact fees, concurrency fees, and/or mobility fees that may be due) or provides for applicable mitigation prior to building permit, then in that event, a final reservation certificate shall be issued and the available capacity for public facilities will be reduced by the projected demand for the Project until the reservation of the capacity expires or becomes permanent. Notwithstanding the foregoing and in accordance with Section 122-3(b) of the City Code, no Development Order shall be issued unless the Developer has proof of payment for all applicable concurrency mitigation and mobility fees, as may be due to all agencies having jurisdiction over the Project.][6]

Section 3.4. **Compliance with Local Regulations Regarding Development Permits**. This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions, subject to the terms of this Agreement.

Section 3.5. **Consistency with the City's Comprehensive Plan**. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Development Site and the Project are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).[7]

Section 3.6. **Presently Permitted Development**. The development that is presently permitted on the Development Site, including population densities, and building intensities and height, which are subject to this Agreement, is more specifically set forth in **Exhibit "M"** hereto.

Section 3.7. **Public Facilities to Serve the Development Site**. A description of the public facilities that will service the Projects subject to this Agreement, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development is included as **Exhibit "O"** hereto.

Section 3.8. **Public Reservations, Dedications**. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is included as **Exhibit "P"** hereto.

Section 3.9. **Required Development Permits**. Attached and made a part hereof as **Exhibit "N"** is a listing and description of certain local development permits approved or needed to be approved for the development of the Projects, provided that City makes no representation or warranty that the information set forth on **Exhibit "N"** is correct or complete. Developer releases City from any liability with respect to such information and Developer acknowledges and Developer agrees that Developer is solely responsible for confirming the correctness and completeness of such information and obtaining all applicable Governmental Approvals whether or not set forth on **Exhibit "N"**.

Section 3.10. **Laws Governing this Agreement**. For the entire Term of this Agreement, the City hereby agrees that the City's Land Development Regulations governing the development of the Development Site

[6] Planning Department to confirm.

[7] Subject to update if amendments to Comprehensive Plan and LDRs not adopted prior to execution.

[as they exist as of the Effective Date of this Agreement][8] shall govern the development of the Development Site and the Project. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies to the Development Site and the Project (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that this provision shall not be deemed to apply to regulations governing height, floor area ratio (FAR), density, parking requirements or permitted uses.

Section 3.11. **Duration of Development Rights**. This Agreement shall run for an initial term of twelve (12) years from the Effective Date (the "Term"), and may be extended by mutual consent of the City and Developer subject to a public hearing(s) pursuant to Section 163.3225, Florida Statutes. Consent to any extension of the development rights granted herein is within the sole discretion of each Party. No notice of termination shall be required by either Party upon the expiration of this Agreement, and after the expiration of this Agreement the Parties shall have no further obligations under this Agreement except for those obligations that expressly survive the expiration of this Agreement.

ARTICLE IV
PROJECT IMPROVEMENTS AND USES

Section 4.1. **Project Improvements and Uses**.

(a) Commercial Retail Improvements and Commercial Retail Project.

(i) The Commercial Retail Improvements shall have a maximum of [45,000] square feet of neighborhood-oriented retail uses, cafes and/or restaurants and office and marina uses, including any outdoor seating created in connection with such uses; provided, however, the Commercial Retail Improvements shall not include any free-standing outdoor bars, nightclubs or other uses prohibited by the Marina Lease.

(ii) The Commercial Retail Improvements shall include approximately 100 parking spaces for use by the marina and Commercial Retail Premises to replace the parking spaces within the Existing Improvements and shall include appropriate drop off and valet and services necessary to serve the Commercial Retail Project.

(iii) The Commercial Retail Improvements shall include public restroom facilities, which, at Developer's election, may be located within the Park Site.

(iv) The Commercial Retail Improvements shall include the Green Space and the Park Project. The Park Project shall be Completed in accordance with the Approved Plans therefor and open to the public no later than the date a Certificate of Occupancy is issued for the Commercial Retail Project.

(v) The provisions of this Section 4.1(a) will be expressly incorporated into the Marina Lease.

[8] Subject to approval of Comp Plan Amendments on July 29 prior to execution of this Agreement.

(b) Residential Improvements and Residential Project.

(i) The Residential Improvements shall include up to 60 residential units constructed within approximately [275,000] gross square feet of residential building development and associated infrastructure.

(ii) The tower structure of the Residential Improvements shall not exceed 385 feet in height (as measured from Base Flood Elevation plus maximum Freeboard (BFE + 5 feet), and further, as provided in the City's Land Development Regulations, including Section 142-1161 of the City Code), and any architectural projections thereof will comply with the terms of this Agreement and other applicable provisions of the City's Land Development Regulations

(iii) Developer acknowledges and agrees that, as part of the consideration to the City for the vacation of the City Right-of-Way Area and for entering into this Agreement, any agreements for the rental, lease, sublease, use or occupancy of residential units within the Residential Improvements for periods of less than six (6) months and one (1) day shall be expressly prohibited [(x) with respect to all residential units that are part of a condominium form of ownership and owned by person or entities other than the Residential Developer, and (y) ninety percent (90%) of the residential units owned by the Residential Developer; provided, however, any agreements for the rental, lease, sublease, use or occupancy with respect to the remaining ten percent (10%) of residential units owned by the Residential Developer for periods of less than thirty (30) days shall be expressly prohibited. In addition, with respect to such ten percent (10%) of residential units owned by the Residential Developer that may be rented, leased, subleased, used and/or occupied for periods of thirty (30) days or more, the Developer shall provide the City Manager (or the City Manager's designee) with a list of such residential units on a monthly basis. If requested by the City, the Developer shall make available to the City Manager (or the City Manager's designee) for inspection such other documentation reasonably sufficient to permit the City to verify compliance with the rental restrictions set forth in this Section 4.1(b)][9].

(iv) The provisions of this Section 4.1(b) shall be expressly incorporated into the Reciprocal Easement Agreement and into the declaration of condominium to which the residential units are subjected.

(c) Reciprocal Easement Agreement. Upon Closing, the City, Marina Lessee and Residential Developer shall enter into the Reciprocal Easement Agreement, which shall grant reciprocal easements between the Commercial Retail Premises and the Residential Parcel and shall impose rights, obligations and covenants addressing the respective needs of the City, Marina Lessee and the Residential Developer. The Reciprocal Easement Agreement also shall include the restrictions and limitations imposed upon the development of the Residential Parcel pursuant hereto and in the Project Approvals.

(d) Park Easement. Upon Completion of Construction of the Park Project in accordance with the Approved Plans therefor, the City and Marina Lessee shall enter into an easement over and across the Park Site substantially in the form attached as **Exhibit "U"** hereto granting [Marina Lessee][10] certain rights

[9] Parties to confirm.

[10] Developer to confirm.

thereto with respect to access and use of the Park Project. The terms of this Section 4.1(d) shall be expressly incorporated into the Marina Lease.

Section 4.2. Representations.

(a) **Developer's Representation**. Developer represents to the City that its principals and Affiliates are experienced in the development, construction, leasing, sales and operation of properties similar to the Project generally, and that Developer has independently determined the merits and risks of electing to proceed with the development of the Project, and that Developer is not and, will not be relying upon any information that may have been or hereafter be provided to Developer with respect to or relating to the financial results derived from, financial merits of investing in, or other economic or other benefits that may be realized from the development, construction, leasing, sales and operation, as applicable, of the Project or sale or transfer of Developer's interests in this Agreement.

(b) **No Representation or Warranties By City**. Developer acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Development Site, and (i) except as specifically provided in this Agreement, the City is not making and has not made any representations or warranties, express or implied, of any kind whatsoever with respect to the Development Site, including any representation or warranty of any kind with respect to title, survey, physical condition, suitability or fitness for any particular purpose, the financial performance or financial prospects of the Project, its value, or any other economic benefit that can be realized or expected therefrom, the presence or absence of Hazardous Substances, the tenants and occupants thereof, the zoning or other Governmental Requirements applicable thereto, taxes, the use that may be made of the Development Site, or any other matters with respect to this transaction or Agreement); (ii) Developer has relied on no such representations, statements or warranties, and (iii) City will in no event whatsoever be liable for any latent or patent defects in the Development Site (including any subsurface conditions).

(c) **"AS IS" Condition of Development Site**. Developer acknowledges it has relied solely on Developer's own inspections, tests, evaluations and investigations of and related to this Agreement and the Development Site in its determination of whether to proceed with this Agreement and the Project. As a material part of the consideration of this Agreement, Developer agrees to accept the Development Site in its "AS IS" and "WHERE IS" condition "WITH ALL FAULTS" and latent or patent defects, and without representations and warranties of any kind, express or implied, or arising by operation of law.

(d) **Survival**. The provisions of this Section 4.2 shall survive the termination of this Agreement.

ARTICLE V
ASSIGNMENT

Section 5.1. Purpose of Restrictions on Transfer. This Agreement is granted to Developer solely to develop the Project and its subsequent use according to the terms hereof, and not for speculation in landholding. Developer recognizes that, in view of the importance of developing the Project to the general welfare of the City and the general community, the Developer's qualifications and identity are of particular concern to the community and the City. Accordingly, Developer acknowledges that it is because of such qualifications and identity that the City is entering into this Agreement with Developer, and, in so doing,

the City is further willing to accept and rely on the Developer's obligations for faithfully performing all its undertakings and covenants.

Section 5.2. Transfers. Developer represents and warrants that Developer has not made, created or suffered any Transfers as of the date of this Agreement and that the Persons that have an ownership interest in Developer on the date of this Agreement are listed, together with their percentage and character of ownership, on **Exhibit "R"**. No Transfer may or shall be made, suffered or created by Developer, its successors, assigns or transferees without complying with the terms of this Article V. Any Transfer that violates this Agreement shall be null and void and of no force and effect. Notwithstanding anything to the contrary set forth herein, including Section 5.3 hereof, prior to the Completion of Construction, David Martin shall continue, directly or indirectly, to direct the day-to-day management and policies of Developer and to own, directly or indirectly, at least ten percent (10%) of the ownership interests of Developer (the "Ownership and Control Requirement").

Section 5.3. Permitted Transfers.

(a) Other than Permitted Transfers, no Transfer will be permitted prior to Completion of Construction of the Project without the written Approval of the City Manager.

(b) Each of the following Transfers, shall be permitted hereunder without the City's Approval ("Permitted Transfers"):

(i) a Transfer prior to the Completion of Construction of a direct or indirect interest in Developer, provided that (i) there is no change of Control of the Developer as it exists on the Effective Date as a result of such Transfer, (ii) such transferee satisfies the applicable "Acceptable Owner Criteria" set forth on **Exhibit "A"** attached hereto, (iii) the City is given written notice thereof together with true and correct copies of the applicable information required under **Exhibit "A"** attached hereto and in accordance with the time frames set forth on **Exhibit "A"** attached hereto in order for City Manager to confirm that the transferee is an Acceptable Owner; (iv) no Event of Default has occurred and is continuing and (v) all of the conditions precedent to the effectiveness of such Transfer as set forth in Section 5.5 hereof are satisfied;

(ii) Any Transfer, if in accordance with the terms and conditions of Article VI, by the First Mortgagee, to an agent, designee or nominee of the First Mortgagee that is wholly owned or Controlled by such First Mortgagee;

(iii) Any Transfer directly resulting from the foreclosure of a First Mortgage or the granting of a deed in lieu of foreclosure of a First Mortgage or any Transfer made to the purchaser at foreclosure of a First Mortgage or to the grantee of a deed in lieu of foreclosure of a First Mortgage (if such purchaser or grantee is a nominee in interest of the First Mortgagee), and provided further that such Transfer, purchase or grant is in accordance with the terms and conditions of Article VI;

(iv) Any Transfer directly resulting from a conveyance to a First Mortgagee of Developer's interest provided it is in accordance with the terms and conditions of Article VI;

(v) Any Transfer directly resulting from the foreclosure by the Mezzanine Lender of a pledge of ownership interests of Developer or any Transfer made to the purchaser at a foreclosure of such pledge of ownership interests of Developer (if such purchaser is a nominee in interest of the

Mezzanine Lender), or any assignment in lieu of such foreclosure, provided that such Transfer is in accordance with the terms and conditions of Article VI;

(vi) Any Transfer that occurs by inheritance, devise, bequest or by operation of law upon the death of a natural person who is the owner of a direct or indirect ownership interest in Developer, provided that, in each case, at all times after such Transfer, the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest; or

(vii) Any Transfer to a trust, partnership or other entity for family estate planning purposes, provided that, in each case, at all times after such Transfer, the transferor retains Control of the transferred interest.

Section 5.4. Transfer Requiring City's Approval. Regarding any Permitted Transfer pursuant to Section 5.3(b) or any other Transfer that is not a Permitted Transfer, Developer shall give or cause to be given to the City written notice of a Transfer (in the case of a Permitted Transfer), or written notice requesting Approval of any other Transfer that is not a Permitted Transfer, and submitting all information reasonably necessary for the City Manager (or the City Commission, with respect to Transfers to certain Foreign Instrumentalities as specified herein) to evaluate the proposed transferees and the Transfer and to obtain the City's Approval of same, when such Approval is required under the terms of this Agreement. If a Permitted Transfer under Sections 5.3(b)(i), said information shall demonstrate that there is no change of Control of Developer as a result of such Transfer, the transferee is an Acceptable Owner as set forth on **Exhibit "A"** attached hereto and the Ownership and Control Requirement is satisfied; if a Permitted Transfer under Sections 5.3(b)(vi) or (vii) said information shall demonstrate that the transferor, or in the case of death, the Person who inherits transferor's interest, retains Control of the transferred interest. If not a Permitted Transfer, Developer shall provide to the City the information described in Paragraph C of **Exhibit "A"** and the provisions described in Paragraph D of **Exhibit "A"** shall apply. The City's confirmation or Approval process shall proceed as set forth on **Exhibit "A"** attached hereto. Any Approval of a Transfer to a Foreign Instrumentality (other than to any of the member countries of the European Union, each as existing as of the Effective Date, United Kingdom, Norway, Canada and Mexico, or Persons Controlled by any of the foregoing countries) shall be subject to the prior written approval of the City Commission, which approval may be granted, conditioned or withheld by the City Commission in its sole discretion. Any Approval of a Transfer shall not waive any of the City's rights to Approve or disapprove of any subsequent Transfer. Developer shall from time to time throughout the Term, as the City shall reasonably request, furnish the City with a complete statement, subscribed and sworn to by a Responsible Officer of Developer, setting forth the full names and address of holders of the ownership interests in Developer who hold, directly or indirectly, at least a ten percent (10%) interest in Developer as well as to confirm the percentage ownership interest, if any, of such Responsible Officer.

Section 5.5. Effectiveness of Transfers. No Transfer shall be effective unless and until executed copies of the documents that convey title to the transferred interest are delivered to the City within thirty (30) days after the occurrence of such Transfer.

ARTICLE VI
CONSTRUCTION FINANCING; RIGHTS OF MORTGAGEE, MEZZANINE LENDER AND DEVELOPER

Section 6.1. Conditions of Construction Financing, First Mortgage and Mezzanine Loan.

(a) Developer shall have the right to secure a Construction Loan and Mezzanine Loan to finance the Project and, in conjunction with and to secure that financing, may enter into a First Mortgage in favor of a First Mortgagee and/or a pledge of its ownership interests in favor of a Mezzanine Lender, provided that:

(i) any such secured financing of the Project exclusively secures debt of the Developer or the Mezzanine Borrower directly related to the Project;

(ii) no First Mortgage or other encumbrance executed by the Developer in connection with such First Mortgage or Mezzanine Loan or otherwise will extend to or be a lien or encumbrance upon City's interest in any part of the Land or in any right appurtenant to that interest;

(iii) the First Mortgage and any other encumbrance executed by the Developer in connection with such First Mortgage or otherwise shall at all times, without the necessity for the execution of any further documents, be subject and subordinate to the interest of the City in the Land subject to this Article VI; provided that (A) the First Mortgagee agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by the City under this Agreement to evidence the foregoing subordination and (B) the City agrees from time to time upon reasonable request and without charge to execute, acknowledge and deliver any instruments reasonably requested by such First Mortgagee or Mezzanine Lender to evidence the City's non-disturbance and recognition of the rights granted to such First Mortgagee or Mezzanine Lender pursuant to this Section 6.1;

(iv) the rights of the City in the Land and arising out of the Existing Marina Lease, the Marina Lease and this Agreement shall not be affected by the First Mortgage, First Mortgagee, Mezzanine Loan or Mezzanine Lender, nor shall the City be deprived in any other way of its rights in the Land or under the Existing Marina Lease, the Marina Lease and this Agreement, except to the extent provided in this Article VI or in any subordination, non-disturbance and recognition agreement between the City and such First Mortgagee or Mezzanine Lender that is consistent with the terms of this Agreement;

(v) Developer shall at all times remain liable hereunder for the performance of all covenants and conditions as provided in this Agreement;

(vi) Following a foreclosure sale, any purchaser at such foreclosure sale acquiring any right, title or interest in or to this Agreement, shall enter into in a written instrument reasonably satisfactory to the City, to assume and agree to perform all of the terms, covenants and conditions of Developer hereunder arising after the date of such Transfer (provided that City does not waive or relinquish its right, and shall have the right, to enforce its remedies with respect to any Event of Default existing as of the date of such Transfer), that no additional mortgage or assignment of this Agreement or pledge of ownership interests of Developer will be made except in accordance with the provisions contained in this Article VI, and that a duplicate original of such written instrument, duly executed and acknowledged by such purchaser and in recordable form, is delivered to the City immediately after the consummation of such sale, or, in any event, prior to taking possession of the Development Site.

(b) Prior to the date (i) a First Mortgage is recorded or (ii) the Mezzanine Lender, if any, enters into a Mezzanine Loan agreement with Developer, the First Mortgagee or Mezzanine Lender, as applicable, Developer and the City (by and through the City Manager) shall enter into a non-disturbance, recognition and attornment agreement containing the provisions set forth in Section 6.1(d) below and

such other terms and conditions as are reasonably acceptable to the First Mortgagee or Mezzanine Lender, as applicable, and the City Manager, after consultation with the City's Chief Financial Officer and City Attorney.

(c) Developer shall deliver to the City, promptly after execution by Developer, (i) a true and verified recorded copy of any First Mortgage and any amendment, modification or extension thereof, together with the name and address of the First Mortgagee and (ii) a true and correct copy of any Mezzanine Loan agreement and any amendment, modification or extension thereof, together with the name and address of the Mezzanine Lender.

(d) For so long as any First Mortgage encumbers the Development Site, or, as applicable, a Mezzanine Lender holds a pledge of Developer's ownership interest, and provided the conditions of Section 6.1(a) through (c) above have been satisfied:

(i) in any event where the City gives Developer notice of an Event of Default, the City shall deliver a copy of such notice to the First Mortgagee and Mezzanine Lender, at the name and address designated in writing by the First Mortgagee and Mezzanine Lender to the City from time to time (the City shall be deemed to have fulfilled its notice obligation by providing the required notice to the address delivered to the City in accordance with Section 6.1(c) or such other address so designated by the First Mortgagee or Mezzanine Lender to the City in writing and shall not be responsible for any liability in the event such address is not current);

(ii) notwithstanding the time allowed for Developer to cure an Event of Default, the First Mortgagee and the Mezzanine Lender shall have the right, but not the obligation, up to fifteen (15) days following the City's notice thereof to cure a monetary default, and up to thirty (30) days following the City's notice thereof to cure a non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the First Mortgagee and Mezzanine Lender will not be given any additional time to remedy), but if such non-monetary Event of Default cannot be cured within such thirty (30) day period, then the First Mortgagee and Mezzanine Lender shall (except as provided in clauses (iii) and (iv) below) have up to ninety (90) days to cure, provided that it has started to do so within the initial thirty (30) day period and thereafter continues to diligently pursue the cure. The City will accept performance by the First Mortgagee and Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer; and

(iii) notwithstanding the provisions of this Agreement to the contrary, including Article VII hereof, no Event of Default by Developer will be deemed to exist as to the First Mortgagee, and the City shall not be permitted to terminate this Agreement due to an Event of Default of Developer, as long as the First Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the First Mortgagee will not be given any additional time to remedy) is such that possession of or title to the Project is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the First Mortgagee (e.g., Developer bankruptcy) (and which will be waived as to the First Mortgagee if the First Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with this clause (iii) or clause (ii) above), files a complaint for foreclosure and thereafter prosecutes the foreclosure action in good faith and with due diligence and continuity (subject to any stays, moratoria or injunctions applicable thereto) and obtains possession or title, to the extent a cure cannot be effected without possession or title, directly or through

a receiver, and as promptly as practicable after obtaining such possession or title, to the extent a cure cannot be effected without possession or title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the First Mortgagee has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iii), and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Developer under this Agreement, to the extent they are susceptible of being performed by the First Mortgagee (e.g., the payment of the Initial Purchase Price), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the First Mortgagee may notify the City, in writing, that it has relinquished possession of the Development Site, or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the First Mortgagee will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the Mezzanine Lender set forth in clause (iv) below, the City will have the unrestricted right to terminate this Agreement and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 6.1(h) hereof will apply.

(iv) notwithstanding the provisions of this Agreement to the contrary, including Article VII hereof, no Event of Default by Developer will be deemed to exist as to the Mezzanine Lender, and the City shall not be permitted to terminate this Agreement due to an Event of Default of Developer, as long as the Mezzanine Lender and/or First Mortgagee, in good faith, either (A) commences to cure such Event of Default and prosecute the same to completion in accordance with clause (ii) or (iii) above, or (B) if the nature of any non-monetary Event of Default (except an Event of Default under Section 7.1(d) hereof, for which the Mezzanine Lender will not be given any additional time to remedy) is such that title to the ownership interests of Developer is reasonably necessary to cure the Event of Default or if the Event of Default is of the type that cannot commercially reasonably be cured by the Mezzanine Lender (e.g., Developer bankruptcy) (and which will be waived as to the Mezzanine Lender if the Mezzanine Lender and/or First Mortgagee commences to cure all other Events of Default and prosecutes same to completion in accordance with clause (ii) or (iii) above), has taken all commercially reasonable steps necessary to foreclose the pledge of the Developer's ownership interests, and prosecutes such action in good faith and with due diligence and continuity (subject to any customary and reasonable restrictions imposed under any intercreditor agreement or similar agreement between any First Mortgagee and Mezzanine Lender and/or any stays, moratoria or injunctions applicable thereto) and obtains title to the ownership interests of the Developer, and as promptly as practicable after obtaining such title, commences promptly to cure such Event of Default and to prosecute the same to completion in good faith and with due diligence and continuity; provided, however, that the Mezzanine Lender has delivered to the City, in writing within twenty (20) days following receipt of City's notice of default, its agreement to take the action described in clause (A) or (B) of this clause (iv), and that during the period in which such action is being taken, all of the other obligations of Developer under this Agreement, to the extent they are susceptible of being performed by the Mezzanine Lender (e.g., the payment of the Initial Purchase Price), are being duly performed. However, at any time after the delivery of the aforementioned agreement, the Mezzanine Lender may notify the City, in writing, that it has relinquished title to the ownership interests of the Developer or that it will not seek to foreclose the pledge of Developer's ownership interests or, if such foreclosure has commenced, that it has been discontinued, and in such event, the Mezzanine Lender will have no further liability under such agreement from and after the date which is 30 days after it delivers such notice to the City (except for any obligations accruing prior to 30 days after the date it delivers such notice), and, thereupon, subject to the rights of the First Mortgagee

set forth in clause (iii) above, the City will have the unrestricted right to terminate this Agreement and to take any other action it deems appropriate by reason of any Event of Default, and upon any such termination, the provisions of Section 6.1(h) hereof will apply.

(e) From and after the date upon which the City receives the notice described in Section 6.1(c) hereof, the City will not (i) consent to a cancellation or surrender of this Agreement (except upon the expiration of the Term), or any amendment or modification hereof or (ii) terminate this Agreement other than as provided in this Article VI (except upon the expiration of the Term) without the prior written consent of the First Mortgagee and Mezzanine Lender, which consent shall not be unreasonably delayed, conditioned or withheld.

(f) Notwithstanding anything in this Agreement to the contrary, foreclosure of a First Mortgage or any sale thereunder, whether by judicial proceedings or by any power of sale contained in the First Mortgage or applicable law, or any conveyance of the Project from Developer to the First Mortgagee or its designee or nominee in lieu of the foreclosure or other appropriate proceedings in the nature thereof, or any foreclosure of a Mezzanine Loan, or conveyance of the Developer's ownership interest in lieu thereof, shall not:

(i) require the City's consent; or

(ii) provided the First Mortgagee or the Mezzanine Lender has complied with the provisions of this Article VI, constitute a breach of any provision of or a default under this Agreement.

(g) If the First Mortgagee or any other foreclosure sale purchaser subsequently assigns or transfers its interest under this Agreement after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new agreement entered into pursuant to Section 6.1(h) below, and in connection with any such assignment or transfer, the First Mortgagee or any other foreclosure sale purchaser takes back a First Mortgage to secure a portion of the purchase price, the holder of such First Mortgage shall be a First Mortgagee entitled to receive the benefit of this Article VI and all other provisions of this Agreement intended for the benefit of a First Mortgagee. Similarly, if a Mezzanine Lender or a purchaser under a UCC sale obtains title to the ownership interests in Developer and subsequently assigns or transfers its interests in such ownership interests, or subsequently assigns or transfers its interest under any new agreement entered into pursuant to Section 6.1(h) below, and in connection with any such assignment or transfer, the Mezzanine Lender or any other UCC sale purchaser takes back a pledge of the ownership interests of the Developer to secure a portion of the purchase price, the holder of such pledge shall be a Mezzanine Lender entitled to receive the benefit of this Article VI and all other provisions of this Agreement intended for the benefit of a Mezzanine Lender.

(h) Should the Developer or any First Mortgagee or Mezzanine Lender not cure the alleged Event of Default as provided in this Section 6.1, the City has the right to terminate this Agreement by reason of any uncured Event of Default as provided in this Agreement. If this Agreement is terminated by the City in accordance with the foregoing or is terminated as a result of the bankruptcy of the Developer, the City shall give written notification of such termination to the First Mortgagee and Mezzanine Lender, and the City shall, upon written request of the First Mortgagee to the City received within thirty (30) days after such notice of termination, enter into a new development agreement for the Development Site with such First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, for the remainder of the Term with the same covenants, conditions and agreements (except for any requirements which have

been fully satisfied by Developer or City prior to termination or which pertain to the ownership of Developer) as are contained herein.

(i) The City's delivery of the Development Site to the First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, pursuant to a new development agreement shall be:

(i) made without representation or warranty of any kind or nature whatsoever either express or implied;

(ii) First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, shall take such Development Site "as-is" in its then current condition; and

(iii) upon execution and delivery of such new development agreement, First Mortgagee or Developer (as owned by Mezzanine Lender), as developer, at its sole cost and expense shall be responsible for taking such action as shall be necessary to cancel and discharge this Agreement and to remove Developer named herein and any other occupant (other than as allowed by the First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, or the City) from the Project.

(j) The City's obligation to enter into such new development agreement for the Development Site with the First Mortgagee or Developer (as owned by the Mezzanine Lender) shall be conditioned upon, on the date the new development agreement is executed:

(i) the City receiving payment of the Initial Purchase Price and the First Mortgagee's or Developer's (as owned by the Mezzanine Lender), as applicable, assumption of the City Note and the City Mortgage;

(ii) all monetary defaults hereunder having been cured;

(iii) all non-monetary defaults susceptible to cure having been remedied and cured (or First Mortgagee or Developer (as owned by Mezzanine Lender), as applicable, as developer, having commenced such cure and continuing to diligently complete the cure in accordance with clauses (iii) or (iv) of paragraph (d) above, as applicable); and

(iv) the City receiving payment of all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by the City in connection with such Event of Default, the termination of this Agreement and the preparation of the new development agreement, together with interest thereon at the lesser of the Default Rate or the highest rate permitted by law, from the due date or the date expended by the City, as the case may be, to the date of actual payment from First Mortgagee or Mezzanine Lender, as applicable.

Section 6.2. **No Waiver of Developer's Obligations or City's Rights.** Nothing contained herein or in any Mortgage shall be deemed or construed to relieve Developer from the full and faithful observance and performance of its covenants, conditions and agreements contained herein, or from any liability for the non-observance or non-performance thereof, or to require, allow or provide for the subordination to the lien of such Mortgage or to any Mortgagee of any estate, right, title or interest of the City in or to the Land, buildings and structures on the Commercial Retail Premises, or the Existing Marina Lease, the Marina Lease and this Agreement, nor shall the City be required to join in such mortgage financing or be

liable for same in any way. City's interest in the Land, the Existing Marina Lease, the Marina Lease and this Agreement, as the same may be modified, amended or renewed, will not at any time be subject or subordinate to (a) any Mortgage now or hereafter placed upon Developer's interest in the Development Site, or (b) any other liens or encumbrances hereafter affecting Developer's interest in the Development Site or this Agreement**.** City represents and warrants to Developer that no mortgages currently exist against its fee interest in the Land, and acknowledges that this Agreement shall not be subordinate to any future mortgage against the fee interest in the Land. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of City in the Land or this Agreement shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Agreement and the rights of Developer hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Agreement.

ARTICLE VII
REMEDIES; EVENTS OF DEFAULT

Section 7.1. **Default by Developer.** Each of the following occurrences shall constitute an "Event of Default" of Developer that shall entitle City to terminate this Agreement and seek any other remedies as set forth in Section 7.2:

(a) if Residential Developer defaults under the Purchase and Sale Agreement and as a result thereof, the City terminates the Purchase and Sale Agreement;

(b) if the term of the Marina Lease does not commence on or before January 1, 2022 except as a result of any Marina Lawsuit, after the exhaustion of all appeals by Marina Lessee pursued diligently and in good faith;

(c) if Marina Lessee defaults under the Marina Lease and as a result thereof, the City terminates the Marina Lease; subject to the rights of Commercial Retail Developer, as sublessee of the Marina Lease, pursuant to that certain non-disturbance agreement executed by the City and Commercial Retail Developer pursuant to the Marina Lease; [11]

(d) if Developer fails to satisfy all of the Construction Commencement Conditions prior to Commencement of Construction;

(e) if Developer fails, after Commencement of Construction, to cause the Completion Date to occur by the Construction Completion Date;

(f) if Developer or any Person with an ownership interest in Developer violates the Acceptable Owner Criteria specified in subparagraph A.3 of **Exhibit "A"** of this Agreement (other than any such violation by any Persons that have ownership interests in Agreement through any entity that is listed on any national securities exchange), or is a Prohibited Person (other than Persons that have ownership interests in Developer through any entity that is listed on any national securities exchange); provided, however, in the case of any such violation by any Person with an ownership interest in Developer,

[11] Marina Lease also to include cross-default with this Agreement.

Developer shall have ninety (90) days months to cure such violation after Developer first becomes aware of such violation;

(g) if Developer fails to maintain or provide evidence of all insurance in compliance in all material respects with Article IX hereof (any lapse in required coverage shall be deemed a failure to comply with Article IX hereof) and such failure continues for a period of ten (10) Business Days from the date of written notice thereof from City;

(h) if Developer fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Agreement not otherwise addressed in this Section 7.1 and such failure continues for a period of 30 days after written notice thereof by City to Developer specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 30 day period, in which case no Default will be deemed to exist as long as Developer (i) commences curing the same within such 30 day period, (ii) advises the City of the steps being taken by Developer to remedy such Default (which steps shall be reasonably designed to effectuate the cure of such Default in a professional manner) and thereafter, from time to time, upon the City's request, updates the City as to the status of such cure, and (iii) diligently and continuously prosecutes such cure to completion, but no longer than a total of one hundred twenty (120) days;

(i) if Developer admits, in writing, that it is generally unable to pay its debts as such debts become due;

(j) if Developer makes an assignment for the benefit of creditors;

(k) if Developer files a voluntary petition under the Bankruptcy Code or if such petition is filed against Developer and an order for relief is entered, or if Developer files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law, or seeks or consent to or acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, or of all or any substantial part of its properties or of the Development Site or any interest of Developer therein;

(l) if within 90 days after the commencement of any proceeding against Developer seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Developer, or of all or any substantial part of its properties or of the Development Site or any interest of Developer therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 30 days after the expiration of any such stay, such appointment has not been vacated;

(m) if any case, proceeding or other action is commenced or instituted against Developer seeking the issuance of a warrant of attachment, execution or similar process against all or any substantial part of its property, which case, proceeding or other action results in the entry of an order for

any such relief which has not been vacated, discharged, stayed or bonded pending Developer's appeal therefrom within 30 days from the entry thereof;

(n) if Developer, prior to Completion of Construction, vacates or abandons the Development Site or any portion thereof, or voluntarily abandons construction of any portion of the Project (other than in connection with an Unavoidable Delay in accordance with this Agreement), which abandonment is not cured within a reasonable time, not less than thirty (30) days, following written notice from City;

(o) if this Agreement or Developer's interest herein is assigned, transferred, mortgaged, pledged or encumbered in any manner without compliance with the provisions of this Agreement, or if Developer attempts to consummate any Transfer (by entering into an agreement to sell or assign its interest in this Agreement, Developer or the Project which is not conditioned on satisfying the Transfer provisions of this Agreement, or by agreeing to a Transfer without complying with the provisions governing same in this Agreement), except as expressly permitted herein, and fails to correct such Transfer or such other default under this clause (o) within thirty (30) days after receiving notice from City;

(p) if a levy under execution or attachment is made against Developer or its property and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of 30 days after such execution of attachment;

(q) failure to comply with any of Developer's indemnification obligations under this Agreement and such failure is not cured within 30 days after written notice thereof by the City to Developer.

In no event shall the time period for curing an Event of Default constitute an extension of the Construction Completion Date or any milestone set forth in the Schedule of Performance or a waiver of any of the City's rights or remedies hereunder for an Event of Default which is not cured as aforesaid.

Section 7.2. Remedies for Developer's Default.

(a) If an Event of Default occurs hereunder, the City may elect any one or more of the following remedies, without limitation:

(i) terminate this Agreement;

(ii) enforce strict performance by the Developer with the applicable provisions of this Agreement; or

(iii) recover damages for Developer's breach of this Agreement.

The City's election of a remedy hereunder with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it hereunder or as provided by law with respect to that or any other Event of Default.

(b) If this Agreement is terminated as provided in Section 7.2(a)(i) hereof, the Purchase and Sale Agreement conclusively and automatically shall be deemed terminated and the City will have the right to exercise all of its rights and remedies thereunder. In addition, the City will be entitled to receive

and/or retain the Initial Purchase Price and Developer shall pay or cause to be paid to the City the actual, documented costs and expenses paid by City to third parties in connection with this Agreement and will indemnify City against and compensate City from and for any and all reasonable third party costs incurred by City in enforcing its rights and remedies hereunder and under the Purchase and Sale Agreement.

(c) Upon any termination of this Agreement and the Purchase and Sale Agreement (whether pursuant to this Section 7.2 or otherwise), Developer shall quit and peaceably surrender the Development Site (which includes all improvements thereon, subject to Developer's demolition obligations hereunder), and all property related thereto in its possession to the City, and all rights and interest of Developer in and to the Development Site and the Project (in each case, which includes all improvements thereon) and every part thereof shall cease and terminate.

(d) Upon any termination of this Agreement after the Closing (whether pursuant to this Section 7.2 or otherwise), Developer shall quit and peaceably surrender the Commercial Retail Premises (which includes all improvements thereon, subject to Developer's demolition obligations hereunder) and all property related thereto in its possession to the City, and all rights and interest of Developer in and to the Commercial Retail Premises and the Commercial Retail Project (in each case, which includes all improvements thereon) and every part thereof shall cease and terminate.

(e) If Developer fails to so surrender the Development Site or Commercial Retail Premises, as applicable, in accordance with Sections 7.2(c) or (d) above, the City, without notice, may re-enter and repossess Developer's interest in the Development Site or Commercial Retail Premises (including any Existing Improvements, Commercial Retail Improvements or Improvements), as applicable, without process of law, subject to applicable Governmental Requirements.

(f) In the event the City elects to terminate this Agreement after an Event of Default and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Agreement with five (5) days' written notice to Developer, Developer as debtor in possession or if a trustee has been appointed, to such trustee.

(g) As an additional inducement to and material consideration for City agreeing to this Agreement, Developer agrees that in the event a Bankruptcy or Judicial Action (as defined herein) is commenced which subjects the City to any stay in the exercise of the City's rights and remedies under this Agreement, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, "Stay"), then, provided the Stay is lifted and released as to all Mortgagees and Mezzanine Lenders (to the extent the Mortgage loan documents and Mezzanine Loan documents, as applicable, include Stay relief provisions), Developer irrevocably consents and agrees to the Stay being lifted and released against City, and City shall thereafter be entitled to exercise all of its rights and remedies against Developer under this Agreement. Developer acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Developer under the terms of this Agreement are valuable consideration for such waiver. As used in this Section, the term "Bankruptcy or Judicial Action" shall mean any voluntary or involuntary case filed by or against Developer under the Bankruptcy Code, or any voluntary or involuntary petition in composition, readjustment, liquidation, or dissolution, or any state and federal bankruptcy law action filed by or against Developer, any action where Developer is adjudicated as bankrupt or insolvent, any action for dissolution of Developer or any action in furtherance of any of the foregoing, or any other action, case, or proceeding

that has the effect of staying (or in which a Stay is being obtained against) the enforcement by the City of its rights and remedies under this Agreement.

(h) Notwithstanding the foregoing, in the event that Developer seeks to assume and assign this Agreement pursuant to section 365 of the Bankruptcy Code it will be required to provide to the City adequate assurance of future performance which shall consist of evidence that such assignee satisfies the "Acceptable Owner Criteria" set forth in **Exhibit "A"**.

Section 7.3. Default by the City. An event of default by the City shall be deemed to have occurred under this Agreement if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this Agreement and such failure shall continue for thirty (30) days following the City's receipt of written notice of the non-performance; provided, however, the City shall not be in default of this Agreement:

(a) if the City provides Developer with a written response within said thirty (30) day period indicating the status of the City's resolution of the breach and providing for a mutually agreeable schedule to correct same; or

(b) with respect to any breach that is capable of being cured but that cannot reasonably be cured within said thirty (30) day period, if the City commences to cure such breach within such thirty (30) day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion, but no longer than a total of one hundred twenty (120) days.

Section 7.4. Unavoidable Delay; Third Party Challenges; Termination Rights.

(a) Neither the City nor Developer, as the case may be, shall be considered in breach of or in default of any of its non-monetary obligations, including suspension of construction activities, hereunder by reason of Unavoidable Delay; provided that the Party claiming such Unavoidable Delay delivers written notice to the other Party of such Unavoidable Delay within twenty-one (21) days after first becoming aware of the occurrence thereof, which notice shall describe in reasonable detail the events giving rise to the Unavoidable Delay; and such Party shall diligently attempt to remove, resolve or otherwise seek to mitigate such delay and keep the other Party advised with respect thereto. Time is of the essence with respect to this provision, and any failure by a Party to timely deliver such notice of an Unavoidable Delay shall be deemed a waiver of such Party's right to delay performance as a result of such Unavoidable Delay. With respect to any Unavoidable Delay that is an "Act of God" (e.g., a hurricane) that is of such an extent that reasonable methods of communication or access are not available, then notwithstanding Section 11.5 of this Agreement to the contrary, notice by Developer shall be deemed sufficiently given to City if transmitted via electronic transmission to the City Manager and City Attorney; provided that as soon as reasonably practicable following the occurrence of such "Act of God" a copy of such notice is delivered pursuant to the terms of Section 11.5 hereof.

(b) Subject to the notice requirements of Section 7.4(a) above, all time periods set forth in this Agreement shall be tolled due to Unavoidable Delay and during the pendency of any Lawsuit for a period not to exceed forty-two (42) months in the aggregate; provided, however, that the Construction Completion Date shall not be tolled for any Lawsuit. In the event of any Lawsuit, Developer shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. Developer shall further 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, relating to or resulting from any such Lawsuit. This paragraph shall survive the expiration or any earlier termination of this Agreement.

(c) If a Lawsuit is still pending more than forty-two (42) months after it has been commenced, then either Party, at its option, may from and after the expiration of such forty-two (42) month period and while the Lawsuit remains unresolved, elect to terminate this Agreement by delivering a written notice of termination to the other Party, whereupon this Agreement shall be terminated, and the City and the Developer shall have no further obligation and/or liability to each other hereunder, except as otherwise expressly provided herein. In addition, if Developer, after using diligent good faith efforts, consistent with best industry practices, has been unable to obtain the Project Approvals within fifty-one (51) months after the Effective Date (as such period may be tolled in accordance with this Section 7.4(b)), the City shall have the right to terminate this Agreement. If Developer terminates this Agreement in accordance with this Section 7.4(b), the City shall be entitled to receive and/or retain the entire Initial Purchase Price. If the City terminates this Agreement in accordance with this Section 7.4(b), the City shall receive and/or retain the Initial Purchase Price; provided that the City shall provide Marina Lessee with a rent credit under the Marina Lease in the amount of $[_____] amortized over a term of 30 years.

(d) Developer shall have the right to terminate this Agreement prior to the Commencement of Construction due to: (i) changes to the Project Concept Plan or Approved Plans required by the City's Design Review Board, Planning Board or any other Governmental Authority (including the City) that render the Project economically unfeasible in the reasonable business judgment of Developer; (ii) the Project cannot meet the Concurrency Requirements, or the costs of concurrency mitigation are, in the reasonable business judgment of Developer, economically unfeasible; (iii) Developer, after using diligent good faith efforts, consistent with best industry practices, has been unable to obtain the Project Approvals within fifty-one (51) months after the Effective Date (as such period may be tolled in accordance with Section 7.4(b) above); or (iv) the pendency of any Lawsuit in accordance with Section 7.4(b) above. Following a termination of this Agreement by Developer in accordance with this Section 7.4, the Purchase and Sale Agreement shall automatically and conclusively be terminated and the City and the Residential Developer shall be released from their respective obligations thereunder, provided that City shall be entitled to retain the Initial Purchase Price and Developer shall be responsible for all of the City's costs and expenses in connection herewith and therewith, which obligations shall survive the termination of this Agreement and the Purchase and Sale Agreement.

Section 7.5. Remedies Cumulative; Waiver. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and concurrent, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party. No waiver of any default or Event of Default hereunder shall extend to or affect any subsequent or other default or Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of any Party to exercise any right, power or remedy shall be construed to waive any such default or Event of Default or to constitute acquiescence thereof.

Section 7.6. Right to Cure. If Developer shall default in the performance of any term, covenant or condition to be performed on its part hereunder, the City may, in its sole discretion, after notice to Developer and beyond applicable grace and cure periods (or without such notice and cure in the event of an emergency), perform the same for the account and at the expense of Developer; provided, however: (i) City shall not exercise its rights under this Section 7.6 if the City has not provided the notices required

under Section 6.1(d)(i); and (ii) City shall not exercise its rights under this Section 7.6 if any Mortgagee or Mezzanine Lender is complying with the provisions of Sections 6.1(d)(ii), (iii) or (iv), as applicable, with respect to such default. If, at any time and by reason of such default that remains uncured beyond applicable grace and cure periods, except for defaults relating to failure to satisfy all of the Construction Commencement Conditions by the Commencement of Construction, or defaults that occur prior to the date the Construction Commencement Conditions are satisfied (unless in each case City waives any right to terminate this Agreement), the City is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, Developer shall pay to the City upon demand such sum or sums together with interest thereon at the Default Rate. The City's payment or performance pursuant to the provisions of this Section 7.6 shall not be, nor be deemed to constitute, the City's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

Section 7.7. Survival of Reciprocal Easement Agreement. No termination or expiration of this Agreement after the Closing shall affect or impair the Reciprocal Easement Agreement, which shall continue to encumber the Development Site with respect to any of the City's and Developer's successors in accordance with the terms of the Reciprocal Easement Agreement.

Section 7.8. Dispute Resolution.

(a) City and Developer agree that any dispute, claim or controversy between them relating to or arising under this Agreement ("Dispute") will first be submitted, by written notice, to a designated representative of each of the City and Developer who will meet at City's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the Parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either Party may refer the dispute to mediation. The exclusive venue for any Dispute not resolved by mediation shall be any state or federal court of competent jurisdiction sitting in or for Miami-Dade County, Florida, except for Development Disputes, which shall be resolved in accordance with Section 7.9.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY AND DEVELOPER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES ENTERING INTO THIS AGREEMENT.

Section 7.9. Expedited Arbitration of Development Disputes.

(a) If Developer or City asserts that a Development Dispute has arisen, such asserting Party shall give prompt written notice thereof to the other Party, and such Development Dispute shall be submitted to binding arbitration by the Development Arbitrator in accordance with this Section 7.9.

(b) The Parties shall cooperate to select an independent, neutral, professional arbitrator experienced in the resolution of construction claims and associated subject matter having at least ten (10) years of residential and retail mixed use development or construction experience in the Miami-Dade

County area to serve as the arbitrator (the "Development Arbitrator"). If the Parties cannot agree on a single Development Arbitrator, then each Party shall select an arbitrator with such development or construction experience, who shall jointly select a third arbitrator with such development or construction experience and the three arbitrators shall collectively constitute the Development Arbitrator.

(c) The Development Arbitrator shall, no later than five (5) Business Days after being selected, hold a preliminary, informal meeting with City and Developer in an attempt to mediate such Development Dispute. If such Development Dispute is not resolved at such meeting, the Development Arbitrator shall at such meeting establish a date (the "Hearing Date"), not earlier than five (5) Business Days after such meeting nor later than twenty (20) days after such meeting for a hearing (a "Hearing") to be held in accordance with this Agreement to resolve such Development Dispute.

(d) Developer and City each shall have the right to make one (1) written submission to the Development Arbitrator prior to the Hearing. Such submission shall be received by the Development Arbitrator and the other Party not later than two (2) Business Days prior to the Hearing Date. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(e) The Hearing shall be conducted by the Development Arbitrator. It is the intention of the Parties that the Hearing on a Development Dispute shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(f) The Hearing shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided that the Development Arbitrator is accompanied by representatives of both Developer and City, the Development Arbitrator may, at its option, visit the Development Site to make an independent review in connection with any Development Dispute.

(g) The Development Arbitrator, in rendering its decision with regard to any Development Dispute, shall take into account and at a minimum consider the following factors, which shall be used to guide its decision:

(i) City does not have any Approval rights with respect to the matter of interior design and decor of the Project except to the extent the same is reflected in the Approved Plans or Mandatory Project Design Elements;

(ii) the mutual goal of Developer and City is that costs in excess of the Budgeted Improvement Costs should be avoided or minimized unless proposed by Developer and for which Developer has agreed to provide adequate funds;

(iii) the mutual goal of Developer and City is that the construction of the Project be completed and the Completion of Construction occur by the Construction Completion Date;

(iv) the Project must comply with all Governmental Requirements; and

(v) the magnitude of the modification to the Approved Plans.

(h) Pending resolution of the Development Dispute, Developer may not implement the matter which is the subject of such Development Dispute.

(i) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearing regarding such Development Dispute and shall provide a brief written basis for its decision not later than five (5) Business Days thereafter. Such decision of the Development Arbitrator shall be rendered by (a) the decision of the single Development Arbitrator, (b) the decision of two of the arbitrators comprising the Development Arbitrator, if two are able to agree, (c) the decision of the third arbitrator appointed by each of the Parties' arbitrators, if no two of the three arbitrators are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Development Arbitrator. As to each Development Dispute, the Development Arbitrator's decision shall be limited to resolution of the Development Dispute in question, and the Development Arbitrator shall have no right whatsoever to impose or grant to either Party any remedy other than a decision as to: (i) whether a modification to the Project is a substantial deviation from the Approved Plans or a Prohibited Project Change requiring City's Approval pursuant to Section 2.3; (ii) any contention that City has unreasonably failed to Approve the Plans and Specifications or modifications to the Approved Plans in accordance with this Agreement; (iii) any contention that City has unreasonably failed to Approve a General Contractor for the Project in accordance with Section 2.9(b); or (v) any disagreement as to permitted delays in the Schedule of Performance pursuant to Section 2.8.

(j) The decision of the Development Arbitrator shall be final and binding on the Parties for all purposes and may be entered in any court of competent jurisdiction.

(k) If any matter submitted to the Development Arbitrator hereunder is settled by agreement between the Parties prior to, or independently of, the final determination of the Development Arbitrator, any and all expenses of such binding determination (including fees of the Development Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Development Arbitrator (including fees of the Development Arbitrator) will be borne by the Party against whom such determination has been concluded.

Section 7.10. Disputes Regarding Disapproval of a Proposed Transferee.

(a) If, prior to Completion of Construction, the City Manager determines that a proposed transferee of the Project (or any part thereof), any legal or beneficial interest in the Project (or any part thereof) or any direct or indirect legal or beneficial interest in Developer (each, a "Proposed Transferee") does not satisfy the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to Exhibit "A" attached hereto, and Developer disagrees, and if the matter is not resolved by the designated representatives of the City and Developer as provided in Section 7.8(a) above, then solely with respect to any such determination made by the City Manager, Developer, as its sole remedy, may submit such matter to a panel of experts for a binding determination in accordance with this Section 7.10 (an "Arbitrator"). For the avoidance of doubt, in the event the City Manager exercises his or her right to seek the City Commission's direction or Approval of a Proposed Transferee, Developer shall not have the right to submit the City Commission's determination or disapproval of a Proposed Transferee to arbitration pursuant to

this Section 7.10, but the City Commission shall be subject to the same time period and standards of judgment as would apply to the City Manager as provided in **Exhibit "A"**.

(b) If Developer elects to proceed with an Arbitrator in accordance with this Section 7.10, the determination of whether a Proposed Transferee is an Acceptable Owner, will be made by (a) an expert selected jointly by the City and Developer, or (b) if the City and Developer fail to agree upon a single expert, by an expert selected by the City, an expert selected by Developer and a third expert appointed by the experts selected by the Parties. Any Arbitrator or expert panelist hereunder will each have at least ten (10) years of professional experience in the commercial real estate development industry as a legal or other consultant. The Parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be permitted and agree that neither Party nor the Arbitrator shall have discovery rights in connection with a Dispute hereunder. The proceeding before the Arbitrator shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each Party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either Party's position. Any procedural matter not covered herein shall be governed by procedures mutually agreed upon by the Parties, or if they are unable to agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as amended hereby).

(c) The matter submitted to the Arbitrator will be conclusively determined within thirty (30) days of the appointment of the last Arbitrator by (a) the decision of the single expert, (b) the decision of any two of the three experts, if two are able to agree, (c) the decision of the third expert, if no two of the three experts are able to agree within such period, or (d) agreement between the Parties prior to and independently of the decision of the Arbitrator.

(d) With respect to whether a Proposed Transferee satisfies the definition of an Acceptable Owner and the Acceptable Owner Criteria pursuant to **Exhibit "A"**, the Arbitrator will determine that such Proposed Transferee either satisfies such definition and criteria or fails to satisfy such definition and criteria. If any matter submitted to the Arbitrator hereunder is settled by agreement between the Parties prior to, and independently of, the final determination of the Arbitrator, any and all expenses of such binding determination (including fees of the Arbitrator) will be shared equally by the Parties; and the expense of such binding determination resolved by final determination of the Arbitrator (including fees of the Arbitrator) will be borne by the Party against whom such determination has been concluded.

ARTICLE VIII
PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS; INDEMNIFICATION

Section 8.1. Developer's Duty to Keep Project Free of Liens.

(a) Developer shall not create, cause to be created, or suffer to exist any lien, encumbrance or charge upon the right, title and interest of the City in the Development Site or any part thereof or appurtenance thereto, or any lien, encumbrance or charge upon any assets of, or funds to be appropriated to, the City. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of the City, express or by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific

improvement of, alteration to, or repair of the Project, or any part thereof, nor as giving Developer, any Mortgagee or any other Person any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Development Site, or any part thereof, or against assets of the City, or City's interest in any monetary obligations of Developer as defined in this Agreement.

(b) Notice is hereby given, and Developer shall cause all construction agreements entered into between Developer and the General Contractor or other contractor in privity with Developer or subcontractor in privity with the General Contractor or any other subcontractor to provide that:

(i) City shall not be liable for any work performed or to be performed at the Project or any part thereof for or on behalf of the Developer, any Mortgagee, or any other Person or for any materials furnished or to be furnished to the Project, or any part thereof, for any of the foregoing; and

(ii) no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Development Site, or any part thereof, or any assets of, or funds to be appropriated to, the City.

Section 8.2. Discharging and Contesting Liens. If any such lien as described in Section 8.1 is filed against the Development Site or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Developer shall be filed against any assets of, or funds appropriated to, Developer or the City, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Developer shall not be required to discharge any such lien if Developer shall have (i) furnished the City with, at Developer's sole cost and expense, a cash deposit or surety bond in an amount sufficient to pay the lien and any cost (including interest and penalties), liability or damage arising out of such contest; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Developer's efforts to seek discharge of the lien, the City reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Developer, Developer shall, within ten (10) days of notice to such effect from the City (but not later than three (3) Business Days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or the City may thereafter discharge the lien and look to the security furnished by Developer for reimbursement of its cost in so doing. Notwithstanding anything to the contrary contained in this Section 8.2, in the case of a public improvement lien which provides for installment payments as a means of satisfying such lien, Developer shall be required only to pay, on a timely basis, all installments when due. In the event of any such contest, Developer shall protect and indemnify the City against all loss, expense and damage resulting therefrom as provided in Section 8.3.

Section 8.3. Indemnification.

(a) Developer acknowledges and agrees that this Agreement is not an agreement between City and any architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof for the construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance on the Development Site, and therefore that the limitations on indemnity provisions in Section 725.06, Florida Statutes, as such statute may be amended from time to time, do not apply to this Agreement. Accordingly, to the fullest extent permitted by law, Developer shall defend,

indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of any Claims first arising following the Effective Date, and arising out of, relating to or resulting from any of the following occurrences or events, whether by Developer or its employees, agents, partners, principals, or contractors: (i) the development, construction, use and operation of the Project or any part thereof which is not in compliance with the terms of this Agreement; (ii) the negligent acts or omissions of Developer or its employees, agents, partners, principals, or contractors; or (iii) any challenge to the validity of any Transfer by a third party through legal proceedings or otherwise based on the action or inaction of Developer or its employees, agents, partners, principals, or contractors, except to the extent any liability, losses or damages are caused by the gross negligence or willful misconduct of the City or its officers, employees, agents, or contractors.

(b) Developer shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City which are covered by this indemnity obligation, where applicable, including appellate proceedings, and shall pay reasonable costs, judgments, and reasonable attorney's fees which may issue thereon.

(c) Developer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The City shall give to Developer reasonable notice of any such claims, suits or actions. The provisions of this Section 8.3 shall survive the expiration or early termination of this Agreement.

(d) Developer covenants and agrees that any contracts entered into by Developer and the General Contractor or other contractors in privity with Developer for the Work shall include the indemnities required by this Section 8.3 from the General Contractor or other contractors in privity with Developer in favor of Developer and the City.

Section 8.4. Environmental Matters.

(a) **Defined Terms**.

(i) "Environment" means the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

(ii) "Environmental Condition" means any condition with respect to the Development Site, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from Developer's activities on the Development Site or the activities of any other property owner or operator in the vicinity of the Development Site or any activity or operation formerly conducted by any Person on or off the Development Site.

(iii) "Environmental Damages" means all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the assessment, monitoring, remediation or mitigation of an Environmental Condition (and shall include any

damages for the failure to do so), including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

(iv) "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; as such laws have been amended or supplemented from time-to-time, and the regulations promulgated thereunder; and any equivalent state or local laws; and all other Governmental Requirements relating to reporting, licensing, permitting, investigation and remediation of Releases or Threat of Release into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or pertaining to the protection of the health and safety of employees or the public.

(v) "Environmental Permit" means any Governmental Approval required under any Environmental Law by a federal, state or local governmental or quasi-governmental entity.

(vi) "Hazardous Substance" means any substances or materials presently or hereinafter identified to be toxic or hazardous according to any of the Environmental Laws, including any asbestos, PCB, radioactive substances, petroleum based products, radon gas and includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

(vii) "Release" means any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Substance into the Environment.

(viii) "Threat of Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

(b) **Representations and Warranties of Developer**. Developer represents and warrants that it has made such physical inspection of the Development Site, and has inspected such records of the City, Miami-Dade County, Florida, the State of Florida, and the United States of America, as Developer deemed necessary to make an informed business decision that it would enter into this Agreement with the knowledge that Developer shall be solely responsible for the remediation and abatement of any Environmental Condition existing as of the Effective Date, including any Environmental Condition caused by the City or any prior owner of the Land, that must be remediated and/or abated pursuant to any Environmental Laws. Developer agrees to expeditiously undertake such assessment, remediation, and monitoring of the soil and ground water as required under applicable Environmental Laws; and to take such action as necessary to obtain a No Further Action determination from DERM or DEP, if required under Environmental Laws as soon as may be practical after the Effective Date, and, in any event, prior to Commencement of Construction. Developer agrees that in connection with any remediation or abatement pursuant to this Section 8.4 it will provide to the City all correspondence, reports, studies and

other documents exchanged between the City, its consultants, and DERM or DEP promptly after those documents are provided to or received from DERM or DEP.

(c) **Use of Hazardous Substances**. Developer shall not cause or permit any Hazardous Substances to be brought on, kept or used in or about the Developer except as necessary in connection with the construction of the Project and in compliance with all Environmental Laws.

(d) **Environmental Indemnification**. Developer hereby indemnifies and holds harmless the City, its agents, contractors and employees from and against any and all Environmental Damages to the Development Site. Such obligation of Developer shall include the burden and expense of defending all claims, suits and proceedings (with counsel reasonably satisfactory to the City), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Owner Indemnified Parties. Without limiting the foregoing, if the presence or Release on or from the Development Site caused or permitted by Developer results in contamination of the Development Site, Developer shall promptly take all actions at its sole cost and expense as are necessary to remediate Development Site in compliance with Environmental Laws in effect from time to time and to comply with any requirements imposed by any Governmental Authorities; provided that the City's approval of such actions shall first be obtained.

(e) **Compliance**. Developer, at its sole cost and expense, shall comply with all Environmental Laws with respect to the construction of the Project and the operations of Developer on the Development Site.

Notwithstanding anything to the contrary contained in this Agreement, neither Developer nor General Contractor, or other contractor in privity with Developer, has a duty to indemnify the City in connection with any Environmental Damages to the extent caused by the negligent or intentional conduct of the City or its agents, employees or contractors.

The provisions of this Section 8.4 shall survive the expiration of earlier termination of this Agreement.

Section 8.5. Limitation of City's Liability.

(a) Any tort liability to which the City is exposed under this Agreement shall 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 shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.

(b) City will not in any event whatsoever be liable for any injury or damage to Developer (unless caused by the gross negligence of City, its agents, contractors or employees) or to any other Person happening on, in or about the Development Site and its appurtenances, nor for any injury or damage to the Development Site or to any property belonging to Developer (unless caused by the gross negligence of City, its agents, contractors or employees) or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Improvements (including any of the common areas within the buildings, equipment, elevators, hatches, openings, installations, stairways, hallways or other common facilities or the improvements to the land described in this Agreement), or which may arise from

any other cause whatsoever (unless caused by the gross negligence of City, its agents, contractors or employees).

(c) City will not be liable to Developer or to any other Person for any failure of telephone, computer system, cable TV, water supply, sewage disposal, gas or electric current, nor for any injury or damage to any property of Developer or to any Person or to the Development Site caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Development Site, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person (unless caused by the gross negligence of City, its agents, contractors or employees).

ARTICLE IX
RISK OF LOSS, INSURANCE AND RECONSTRUCTION
[*INSURANCE PROVISIONS TO BE DISCUSSED*]

Section 9.1. **Risk of Loss**. The risk of loss to any of the Work and to any goods, materials and equipment provided or to be provided under this Agreement, shall remain with the Developer until Completion of Construction. Should any of the Work, or any such goods, materials and equipment be destroyed, mutilated, defaced or otherwise damaged prior to Completion of Construction, Developer shall repair or replace the same at its sole cost. The payment bond and performance bond or other security or insurance protection required by this Agreement or otherwise provided by the Developer or the General Contractor shall in no way limit the responsibility of the Developer under this Section.

ARTICLE X
MAINTENANCE AND REPAIRS

Section 10.1. **Standards Generally**. Developer hereby agrees, and shall be exclusively responsible, to develop, operate and maintain the Development Site, the Project and the Improvements thereon in good order and repair during the Term. Developer shall at all times keep the Development Site and the Project in good and safe condition and repair, commercially reasonable wear and tear and (subject to Developer's restoration obligations hereunder) damage by casualty excepted. Regarding the development, operation and maintenance of the Project, Developer shall comply with all applicable Governmental Requirements. Developer shall not knowingly permit, commit or suffer waste or material impairment of the Project, or any part thereof; provided, however, demolition of the Existing Improvements or reconstruction of the Project as permitted under this Agreement shall not constitute waste. In no event shall City be responsible or liable for any maintenance or repair of any Improvement, fixture, equipment, structure, facility, alteration, or addition thereto on the Development Site.

Section 10.2. **Utilities**. City will not be required to furnish any services, utilities or facilities whatsoever to the Development Site pursuant to this Agreement. Any services provided to the Development Site shall be pursuant to the terms of a separate agreement.

Section 10.3. **Cleaning**. Developer shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep the Development Site and the Improvements thereon, whether partially or fully constructed, in a clean, neat, orderly, sanitary and presentable condition.

Section 10.4. **Removal of Trash**. Developer shall, at its sole cost and expense, store, dispose of, and remove or cause to be removed from the Development Site all trash and refuse which might accumulate and arise from its use of the Development Site.

Section 10.5. **Excavation of Land**. Except in connection with the construction of the Project, or reconstruction of the Project as permitted under this Agreement, no excavation of any of the land shall be made, no soil or earth shall be removed from the Development Site, and no well of any nature shall be dug, constructed or drilled on the Development Site, except as may be required for environmental monitoring purposes, without the prior written Approval by City Manager.

Section 10.6. **Water and Sewerage System**. Developer shall operate and maintain, at its sole cost and expense, all the components of the water, sanitary sewerage and storm drainage facilities constructed by Developer as part of the Project [within the boundaries of the Development Site]. Once constructed, Developer shall not make any alterations or modifications to these facilities without the advance written Approval of the City Manager, which approval shall not be unreasonably withheld. Such consent shall be granted if any such alterations or modifications are required to comply with Governmental Requirements.

Section 10.7. **Industrial Waste Facilities**. Developer shall be fully responsible for all industrial wastes on the Development Site caused or produced by Developer or third-parties operating on the Development Site and the proper disposal thereof, in accordance with applicable Governmental Requirements.

Section 10.8. **Inspections**. City and/or its designated representatives shall have the right, during normal working hours, after prior reasonable notice to inspect the Development Site and the Improvements to identify those items of maintenance, repair and reconstruction reasonably required of Developer to keep the Development Site and the Improvements in good order and condition during the Term. If Developer has failed to fulfill its maintenance and repair obligations under this Agreement, City shall provide written notice and Developer shall perform all corrective work identified in such notice within thirty (30) days of receipt of the notice from City; provided, however that if such corrective work cannot be reasonably accomplished within a thirty (30) day period, then Developer shall commence the corrective work within that thirty (30) day period and diligently prosecute same to completion. Trash and debris maintenance shall be corrected within two (2) Business Days following receipt of written notice from City. Failure of City to inspect as aforementioned shall not impose any liability on the City. Nothing in this contractual provision relating to City's inspections shall preclude City from making inspections of the Development Site in accordance with City's regulatory authority.

Section 10.9. **Failure of Developer to Maintain**. If Developer has failed to properly clean, remove trash and debris, maintain and repair the Development Site, the Project and Improvements as required by this Article XI, the City shall provide to Developer a written list of deficiencies, reflecting the amount of time to be reasonably allowed for Developer to correct same. If Developer fails to correct or commence to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, at its option, may elect to correct any or all of such deficiencies, in which case, the City shall give Developer fifteen (15) days further written notice of its intention to do so, and if Developer has not corrected or commenced to correct the same within such additional fifteen (15) day period, the City may enter upon the Development Site and perform all work, which, in the reasonable judgment of the City, is necessary and Developer shall pay the cost of such work, plus twenty-five percent (25%) for administrative costs, to the City within ten (10) days after written demand therefor. If Developer has not corrected or commenced to correct such deficiencies within such additional fifteen (15) day period,

Developer shall not undertake performance of such repairs or cleanup without specific prior written authorization from the City.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.1. **No Partnership or Joint Venture**. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Developer, or as constituting Developer as the agent or representative of the City for any purpose or in any manner whatsoever.

Section 11.2. **Recording**. Within fourteen (14) days after the Effective Date, the City shall record this Agreement in the Public Records of Miami-Dade County, Florida. Developer shall be responsible for all recording fees and other related fees and costs related to the recording of this Agreement. The provisions hereof shall remain in full force and effect during the Term, and subject to the conditions of this Agreement, shall be binding upon the Parties and all successors in interest to the Parties.

Section 11.3. **Florida and Local Laws Prevail**. This Agreement shall be governed by the laws of the State of Florida. This Agreement is subject to and shall comply with the City Code as the same is in existence as of the execution of this Agreement and the ordinances of the City of Miami Beach. Any conflicts between this Agreement and the City Code shall be resolved in favor of the latter. If any term, covenant, or condition of this Agreement or the application thereof to any Person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Any dispute arising out of or relating to this Agreement that specifically provides for arbitration (and only such provisions) shall be subject to arbitration as expressly provided herein. In any such arbitration or in any legal action brought by either Party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and paralegals' fees and costs, including those incurred in subsequent actions to enforce or vacate an arbitration award and those incurred on appeal.

Section 11.4. **No Conflicts of Interest/City Representatives not Individually Liable**. No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

Section 11.5. **Notice.** A notice or communication, under this Agreement by the City, on the one hand, to Developer, or, on the other, by Developer to the City shall be sufficiently given or delivered if in writing

and dispatched by hand delivery, or by nationally recognized overnight courier providing receipts, or by registered or certified mail, postage prepaid, return receipt requested to:

(a) Developer. In the case of a notice or communication to Developer if addressed as follows:

To:

Marina Park, LLC
[_____]
[_____]
[_____]

And:

[_____]
[_____]
[_____]
[_____]

With Copies To:

[_____]
[_____]
[_____]
[_____]

(b) City. In the case of a notice or communication to the City, if addressed as follows:

To:

City Manager
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With Copies To:

City Attorney
City of Miami Beach, Florida
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

or if such notice is addressed in such other way in respect to any of the foregoing Parties as that Party may, from time-to-time, designate in writing, dispatched as provided in this Section.

Section 11.6. **Estoppel Certificates.** The City and Developer shall, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the Party which has requested the same or to

any actual or prospective First Mortgagee, Mezzanine Lender, or purchaser of any equity interest in Developer, a certificate stating that:

(a) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, this Agreement is in full force and effect as modified, identifying such modification agreement, and if this Agreement is not in force and effect, the certificate shall so state;

(b) this Agreement as modified represents the entire agreement between the Parties as to this subject matter, or, if it does not, the certificate shall so state;

(c) the dates on which the Term of this Agreement commenced and will terminate;

(d) to the knowledge of the certifying Party all conditions under this Agreement to be performed up to that date by the City or Developer, as the case may be, have been performed or satisfied and, as of the date of such certificate, there are no existing defaults, defenses or offsets which the City or Developer, as the case may be, has against the enforcement of this Agreement by the other Party, or, if such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate shall so state; and

(e) in connection with any request by a prospective First Mortgagee or Mezzanine Lender, that such proposed First Mortgagee or Mezzanine Lender (as applicable) and such proposed financing satisfy the requirements of Section 6.1, including the requirements of Section 6.1(g).

The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate neither Developer nor the City (nor any individual signing such certificate on such Party's behalf) shall be liable for the accuracy of the statements made therein, but rather shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City or Developer pursuant to this paragraph shall be deemed to have been made by the City or Developer (as the case may be) and not by the person signing same.

Section 11.7. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. Any such counterparts shall constitute one and the same instrument. This Agreement shall become effective only upon execution and delivery of this Agreement by the Parties hereto.

Section 11.9. Successors and Assigns; No Third Party Beneficiaries. Except to the extent limited elsewhere in this Agreement, all of the covenants conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Developer. Developer and the City acknowledge and agree that except for a First Mortgagee or a Mezzanine Lender, if any, each of which shall have the rights set forth in Article VI hereof, no third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof. Notwithstanding anything to the contrary contained in this Agreement, in the event of any assignment of this Agreement by the City, including if all or any portion of the interest of the City in the Development Site or this Agreement shall be acquired by reason of

foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, all references hereunder to the City Manager with respect to Approvals, consents, decisions, waivers, determinations, confirmations, submittals, notifications, communications and other matters shall be deemed to refer to the Person who is then the lessor under this Agreement.

Section 11.10. Entire Agreement. This Agreement and its Exhibits, together with the Purchase and Sale Agreement, Marina Lease and Reciprocal Easement Agreement, constitute the sole and only agreements of the Parties hereto with respect to the subject matter hereof and thereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement, the Purchase and Sale Agreement, Marina Lease and/or the Reciprocal Easement Agreement are of no force or effect and are merged into this Agreement.

Section 11.11. Amendments. No amendments to this Agreement shall be binding on any Party unless in writing and signed by all Parties. Solely to the limited extent as may be necessary to reasonably facilitate the Construction Loan to finance the Project and/or the Mezzanine Loan, the City Manager shall have the delegated authority (but not the obligation), after consultation with the City's Chief Financial Officer and City Attorney, to negotiate and execute modifications to Article 9, Article 10, Sections 6.1(a)(vi) through 6.1(a)(ix), and Sections 6.1(b) through 6.1(k) of this Agreement. All other amendments must be approved by majority vote of the City Commission, subject to the requirements of applicable law. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Developer, or otherwise connected with any action requested by or for the benefit of Developer under this Agreement, and shall be reimbursed by Developer for all out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Developer shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

Section 11.12. Non-Subordination of City's Interest. The City's fee interest in and ownership of the Land and the City's rights and interest in this Agreement (including the rights to any monetary obligations of Developer to the City under this Agreement) shall not be subject or subordinate to or encumbered by any financing for the Project or lien or encumbrances affecting Developer's interest in this Agreement or the Improvements or by any acts or omissions of Developer hereunder. In this regard, any monetary obligations of Developer to the City under this Agreement then payable at any point in time during the Term shall be paid by Developer to the City and shall be superior in right to all claims or rights hereunder or described above in this Section, including the payment of debt service, and any distributions of profits to Developer or any of its Affiliates or owners. City acknowledges that this Agreement shall not be subordinate to any future mortgage against the fee interest in the Land. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of the City in the Land or this Agreement shall be acquired by reason of foreclosure of any mortgage, security agreement, lien or other encumbrance or other proceedings brought to enforce the rights of the holder(s) thereof, by deed in lieu of foreclosure or by any other method, and as a result any Person succeeds to such interests of City, this Agreement and the rights of Developer hereunder shall continue in full force and effect and shall not be terminated or disturbed except as otherwise expressly permitted by the terms of this Agreement.

Section 11.13. City Manager's Delegated Authority. Notwithstanding any provision to the contrary in this Agreement, nothing herein shall preclude the City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Agreement, including,

without limitation, any Approval contemplated under this Agreement (within the timeframe specified therefor as if the Approval was being determined by the City Manager), any proposed amendment or modification to this Agreement or any separate agreement relating to the Project or otherwise referenced in this Agreement.

Section 11.14. **Holidays.** It is hereby agreed that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday recognized by the City, it shall be postponed to the next following Business Day, not a Saturday, Sunday or legal holiday.

Section 11.15. **No Brokers.** Developer shall be responsible for, and shall hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by Developer and which is entitled to a commission as a result of the execution and delivery of this Agreement. The City similarly shall be responsible for, and shall hold Developer harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by the City and which is entitled to a commission as a result of the execution and delivery of this Agreement. This provision shall survive the expiration or termination of this Agreement.

Section 11.16. **No Liability for Approvals and Inspections.** Except as may be otherwise expressly provided herein, no approval to be made by the City in its capacity as the owner of the Land or any inspection of the Work or the Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

Section 11.17. **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Miami-Dade County.

Section 11.18. **Developer Entity.** On the date of execution hereof, each entity comprising the Developer is a [limited liability company]. In the event that at any time during the Term of this Agreement and any extensions and renewals thereof, Developer is a [corporation or an entity other than a limited liability company], then any references herein to member, membership interest, manager and the like which are applicable to [a limited liability company] shall mean and be changed to the equivalent designation of such term which is appropriate to the nature of the new Developer entity.[12]

Section 11.19. **Inflation Adjustments.** All adjustments for inflation required under this Agreement shall be calculated utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100). If the United States Department of Labor should no longer compile and publish this index, the most similar index compiled and published by said Department or any other branch or department of the federal government shall be used for the purpose of computing the inflation adjustments provided for in this Agreement. If no such index is compiled or published by any branch or department of the federal government, the statistics reflecting cost of living increases as compiled by any institution or organization or individual designated by the City and generally recognized as an authority by financial or insurance institutions shall be used as a basis for such adjustments.

[12] Subject to update based on Commercial Retail Developer entity.

Section 11.20. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

Section 11.21. **Waiver of Consequential Damages.** Notwithstanding anything contained in this Agreement to the contrary, in no event shall either Party be liable to the other for any consequential, exemplary or punitive damages.

Section 11.22. **Reservation of Rights.** This Agreement shall not affect any rights that may have accrued to any Party to this Agreement under applicable laws and each Party hereto reserves any and all of such rights.

[signature pages to follow]

IN WITNESS WHEREOF, Developer has caused this Agreement to be duly signed in its name, and the City of Miami Beach has caused this Agreement to be signed in its name by the Mayor, and duly attested to by the City Clerk, and approved as to form and sufficiency by the City Attorney, on the day and year first above written.

WITNESSED BY:

_____
Print Name:

_____
Print Name:

CITY:

CITY OF MIAMI BEACH, FLORIDA

By: _____
Dan Gelber
Mayor

ATTEST

By: _____
City Clerk

Approved for form and legal sufficiency

By: _____
City Attorney

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by Dan Gelber, as mayor of the City of Miami Beach, Florida, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

DEVELOPER:

WITNESSED BY:

RESIDENTIAL DEVELOPER:

MARINA PARK, LLC

_____
Print Name:

By:_____
Name:
Title:

_____
Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of Marina Park, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

WITNESSED BY:

DEVELOPER:

COMMERCIAL RETAIL DEVELOPER:

_____
Print Name:

[_____]

By:_____
Name:
Title:

_____
Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of [_____], a [_____], who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

Joined in and consented to by Marina Lessee solely for purposes of acknowledging and confirming its agreement to the terms of Section 2.10(b) of this Agreement.

WITNESSED BY:

_____
Print Name:

_____
Print Name:

EXISTING MARINA LESSEE:

MARINA BEACH MARINA ASSOCIATES, LTD.

By:_____, its general partner

By:_____
Name:
Title:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [___] physical presence or [___] online notarization, this __ day of _____, 2020, by _____, as _____ of [_____], a [_____], the general partner of Miami Beach Marina Associates, Ltd., who is personally known to me or who produced _____ as identification.

_____
Notary Public
Commission Number:_____

Commission Expires:_____

EXHIBIT "A"
ACCEPTABLE OWNER DEFINITION

A. "Acceptable Owner" means any individual, corporation or other entity which has, at a minimum, the following qualifications:

1. The proposed transferee is not a Foreign Instrumentality other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico, or a Person Controlled by any of the foregoing countries.

2. The proposed transferee must not be owned, or Controlled by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction. But the foregoing shall not apply to individuals or entities owning less than a twenty percent (20%) equity interest in the proposed transferee, other than officers, directors, managers or others who have the power to direct and control the business and affairs of the proposed transferee.

3. The proposed transferee must not in its charter or organizational documents (defined as the articles of incorporation and bylaws for any corporation, the partnership agreement and partnership certificate for any partnership, the articles of organization and limited liability company operating agreement for any limited liability company, the trust agreement for any trust and the constitution of the relevant government for any governmental entity, but expressly excluding any statements, positions, actions or allegations not contained in such charter organizational documents) expressly advocate or have as its stated purpose: (a) the violent overthrow of or armed resistance against, the U.S. government; or (b) genocide or violence against any persons; or (c) discrimination, hatred or animosity toward persons based solely on their race, creed, color, sex or national origin.

4. A proposed transferee of the entire Project or of a direct or indirect Controlling ownership interest in Developer (each, a "Proposed Major Transferee"), or an Affiliate of such Proposed Major Transferee Controlling such Proposed Major Transferee or Person with an ownership interest in such Proposed Major Transferee Controlling such Proposed Major Transferee, shall have had no violations of any applicable law against such Proposed Major Transferee, or any other property owned or managed by such Proposed Major Transferee, within Florida, which have resulted in: (i) a prohibition from continuing to operate such other property for any period of time or (ii) a forfeiture of the Proposed Major Transferee's entire interest in such other property.

5. A Proposed Major Transferee must not (nor any of the individuals or entities who own at least a twenty percent (20%) equity interest in such Proposed Major Transferee or are officers, directors, managers or otherwise have the power to direct and control the business and affairs of such Proposed Major Transferee) have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five (5) years (bankruptcy filings by Affiliates shall not disqualify a Proposed Major Transferee, unless such Affiliates are any of the individuals or entities described in the parenthetical immediately above).

B. "Acceptable Owner Criteria": The foregoing categories of requirements set forth in paragraph A above are collectively defined as the "Acceptable Owner Criteria."

C. Evaluation of the Acceptable Owner Criteria:

Solely for the purpose of evaluating whether the proposed transferee has met the Acceptable Owner Criteria, the proposed transferee shall provide the following information to the Developer and certify that the information provided by the proposed transferee is true and correct and that the proposed transferee meets or exceeds the Acceptable Owner Criteria:

1. solely with respect to a Proposed Major Transferee, information sufficient for the City or any outside vendor engaged by the City to perform a due diligence investigation pursuant to paragraph D below, including copies of any applicable operating licenses;

2. solely with respect to a Proposed Major Transferee, identification and summary description of its principals and its major real estate or other investments;

3. solely with respect to a Proposed Major Transferee, a list of all bankruptcies filed by such Proposed Major Transferee or to which such Proposed Major Transferee was a party-bankrupt, if any; and

4. such other evidence as is commercially reasonably necessary as determined by Developer to establish that the new entity proposed to be the Acceptable Owner meets the Acceptable Owner Criteria.

D. With respect to any proposed Transfer to a Proposed Major Transferee, City may, at its sole discretion, engage an outside vendor to perform a due diligence investigation at the Developer's or such Proposed Major Transferee's sole expense, which may include a search of civil, criminal, or bankruptcy proceedings in federal and state jurisdictions; regulatory filings; tax filings; lien, judgment and Uniform Commercial Code searches; business registrations, and the like; provided, however, that City's right to conduct its own due diligence shall not expand or deemed to expand the Acceptable Owner Criteria or impose additional criteria with respect to whether a proposed transferee constitutes an Acceptable Owner. City shall be entitled to engage an independent accounting firm, the reasonable costs of which shall be borne by Developer or such Proposed Major Transferee, to review the information upon which the Proposed Major Transferee's certifications were based, for the purpose of determining whether the certifications and/or information provided to the City is accurate and complete. Developer shall, or shall cause such Proposed Major Transferee to, reimburse City, upon demand, for any reasonable costs incurred by City in connection with such Transfer or proposed Transfer to a Proposed Major Transferee, including the reasonable out-of-pocket costs of making inquiries and investigations into the conformance with the Acceptable Owner Criteria of such Proposed Major Transferee and the reasonable legal costs incurred, if any, in connection therewith.

E. <u>Confirmation/Approval Process for Proposed Transferees</u>:

Regarding the City's confirmation that a proposed transferee is an Acceptable Owner, or the City's approval of a Transfer that is not a Permitted Transfer, the parties hereby agree that:

1. The City Manager shall rely solely on the proposed transferee's certification that the proposed transferee meets the Acceptable Owner Criteria (if a Permitted Transfer), along with the information provided by the proposed transferee and with respect to any Proposed Major Transferee, the results of any due diligence investigation performed by the City.

2. The City Manager shall not unreasonably withhold the City's confirmation if the proposed transferee complies with the Acceptable Owner Criteria.

3. The City Manager shall not unreasonably withhold the City's Approval of a Transfer that is not a Permitted Transfer, except that with respect to a Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), such Transfer shall be subject to the prior written approval of the City Commission, which may be granted, conditioned or withheld by the City Commission in its sole discretion; and

4. If a proposed Transfer requires the City's confirmation or Approval, Developer shall deliver written notice to the City, which shall include (i) the name and address of the proposed transferee; (ii) the name and address of the proposed transferor; (iii) information describing the nature of the transaction; (iv) the percentage interest being conveyed; and (iv) the materials described in paragraph C above.

5. The City Manager shall have up to forty-five (45) days after the delivery of such written notice and the information required under paragraph C above, to determine whether, on a commercially reasonable basis, the proposed transferee meets the Acceptable Owner Criteria if a Permitted Transfer. The City Manager shall have up to sixty (60) days after the delivery of such written notice and the information required under paragraph C above whether to Approve in accordance herewith a Transfer that is not a Permitted Transfer.

6. Provided that no Event of Default is then continuing, Developer's request for confirmation that the proposed transferee meets the Acceptable Owner Criteria shall be deemed confirmed if the first correspondence from Developer to the City requesting such confirmation is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "THIS IS A REQUEST FOR CONFIRMATION OF A PERMITTED TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AGREEMENT, DATED AS OF [_____], 2020, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN FORTY-FIVE (45) DAYS WILL RESULT IN THE REQUEST BEING DEEMED CONFIRMED," and is accompanied by the information and documents required above and City fails to respond or to deny such request for confirmation in writing within such forty-five (45) day period. Provided that no Event of Default is then continuing, Developer's request for Approval of a Transfer that is not a Permitted Transfer shall be deemed Approved if the first correspondence from Developer to the City requesting such Approval is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous (in a font size that is not less than fourteen (14)) legend at the top of the first page thereof stating that "THIS IS A REQUEST FOR APPROVAL OF A TRANSFER UNDER SECTION 5.4 OF THE DEVELOPMENT AGREEMENT, DATED AS OF [_____], 2020, AND FAILURE TO RESPOND TO THIS REQUEST WITHIN SIXTY (60) DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED" and is accompanied by the information and documents required above and City fails to respond or to deny such request for Approval in writing within such sixty (60) day period. Any Transfer shall be subject to the deemed Approval provisions set forth above in this subparagraph E.6, provided, however, that the City Commission shall have sixty (60) days after receipt of written notice from Developer of any proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), to approve or disapprove of such proposed Transfer, and if the City has not notified Developer, in writing, of the City

Commission's approval of such Transfer within such sixty (60) day period, then such Transfer shall be deemed approved.

7. If the City notifies Developer, in writing, within the first thirty (30) days of such forty-five (45) or sixty (60) day period, as applicable, that the information submitted is, on a commercially reasonable basis, incomplete or insufficient (and specifies in what ways it is incomplete or insufficient), then Developer shall supplement such information, on a commercially reasonable basis, and the City Manager (or City Commission, with respect to Transfers to Foreign Instrumentalities requiring City Commission approval) shall have twenty (20) days after such supplemental information is provided to make its determination whether the proposed transferee meets the Acceptable Owner Criteria or to Approve a Transfer that is not a Permitted Transfer.

8. If the City Manager does not confirm that the proposed transferee does not meet the Acceptable Owner Criteria or disapproves a Transfer that is not a Permitted Transfer, the City Manager shall provide to Developer specific written, commercially reasonable reasons for such action. The failure to object to the proposed transferee or Transfer within the applicable time period set forth above shall be deemed to be the confirmation by the City of the proposed transferee as an Acceptable Owner or Approval of the proposed Transfer, except with respect to a proposed Transfer to a Foreign Instrumentality (other than a member country of the European Union, as existing on the Effective Date, United Kingdom, Canada, Norway and Mexico or Persons Controlled by any of the foregoing countries), which the City Commission must expressly approve in writing, as provided above, in order for such Transfer to be effective.

9. No confirmation by the City of a proposed transferee as an Acceptable Owner or its meeting of the Acceptable Owner Criteria shall have the effect of waiving or estopping the City from later claiming that said Acceptable Owner is no longer developing, operating or maintaining the Project according to the terms of this Agreement.

F. Interpretation:

1. All acts and omissions as well as rights and duties shall be done in a commercially reasonable manner, unless the standard of "sole discretion" is used.

2. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

EXHIBIT "B-1"
LEGAL DESCRIPTION OF THE LAND

[See Exhibit 1 to June 24, 2020 Commission Memorandum]

EXHIBIT "B-2"
DESCRIPTION OF THE RESIDENTIAL PARCEL

[To be provided]

EXHIBIT "C"
BUDGETED IMPROVEMENT COSTS

EXHIBIT "D"
LEGAL DESCRIPTION OF CITY ROW AREA

[see attached]

EXHIBIT "E-1"
ARTICLES OF ORGANIZATION OF RESIDENTIAL DEVELOPER

[see attached]

EXHIBIT "E-2"
ARTICLES OF ORGANIZATION OF COMMERCIAL RETAIL DEVELOPER

[see attached]

EXHIBIT "F"
MANDATORY PROJECT DESIGN ELEMENTS

Project, generally:

[***CITY TO PROVIDE***]

Park Project:[13]

[Summary of Resiliency Features

Benefits Recommended by the City Administration:

- A stormwater management system capable of retaining and disposing runoff in accordance with the City of Miami Beach standards and requirements. At a minimum, the following benchmarks shall be met:
    - City of Miami Beach 10-Year, 24-Hour, 8.75" rainfall storm (which includes a 1.25 factor of safety)
    - FDOT 100-Year, 24-Hour, 13" rainfall storm

- In order to provide tangible, long term water management benefits, the developer shall provide a drainage easement for a future 96" stormwater drainage pipe and space for a stormwater pump station and outfall near Biscayne Bay. This outfall will serve a portion of the Flamingo Neighborhood drainage needs. If this cannot be provided due to technical reasons as determined by the City, one of the following options shall be provided:

    1. A grid system of shallow injection wells shall be provided, with a total of 12 wells for a total capacity of 12@2,000 gallons per minute or 24,000 gpm. This will provide for water quality treatment for 35 acres which is equivalent to one quarter of the entire South Pointe drainage basin.

    2. A 4.4 acre–feet of storage under the park area between 1' above the water table and the surface shall be provided. This will provide for water quality treatment for 35 acres which is equivalent to one quarter of the entire South Pointe drainage basin.

    3. Bioswales, within the park area, provided the City receives credit from DERM for water quality treatment equivalent to a 35 acre site which is equivalent to one quarter of the entire South Pointe drainage basin.

    4. Any combination of items 1, 2 and 3 above to provide for water quality treatment for 35 acres which is equivalent to one quarter of the entire South Pointe drainage basin.

    The above noted water treatment options shall promote the cleaning of the first flush of rainfall from the lift station to the bay. The capacity of the above water treatment options shall not be

[13] Parties to discuss.

utilized towards on-site stormwater management and a separate stormwater management system shall be constructed as described above.

At a minimum, the following benchmarks shall be met for the proposed shallow injection wells:

- All wells shall be provided for the sole purpose of improving the performance and quality of storm water runoff from the proposed stormwater system, within the South Pointe Neighborhood.
- All wells shall have a minimum combined capacity of 24,000 gallons per minute with no well design assuming more than 2,000 gallons per minute per individual well.
- All wells shall be designed and constructed in accordance with regulatory requirements.
- All wells shall be permitted for use as injection wells with passive pressure relief by means of an orifice plate or other method approved by applicable regulatory authorities and the City.
- All wells shall contain a header, with an appropriate passive pressure relief device, manifolding all wells to a proposed pump station.
- All wells shall be spaced in a manner to ensure that no well capacity is limited by another.
- All wells shall be tested to confirm minimum required capacity is achieved.

- Cisterns shall be provided to capture water runoff during storm events and provide reuse opportunity to irrigate planting.

- A continuous perimeter swale shall be constructed to contain storm and irrigation runoff water on the property.

Benefits Proposed by the Developer:
• Develop 1 acre into a park for the benefit of city residents
• The park will provide different areas to include open green spaces, benches, drinking fountains, outdoor living rooms enclosed with landscaping.
• Provide landscape to encourage habitat areas for pollinators, including at least 70% of plants and trees to be native.
• Provide lighting to limit backlight, up light and glare, within temperature ranges in accordance with City safety requirements, including but not limited to light poles, lighted bollards and landscaping lighting.
• A stormwater management system capable of retaining and disposing runoff in accordance with the City of Miami Beach as well as the F-DOT design storm requirements.
o Miami-Dade County RER (DERM) 5-Year, 1-Hour 3.2” rainfall storm
o Miami-Dade County RER (DERM) 5-Year, 24-Hour, 6” rainfall storm
o City of Miami Beach 10-Year, 24-Hour, 8.75” rainfall storm (which includes a 1.25 factor of safety)
o FDOT 100-Year, 24-Hour, 13” rainfall storm
• A bio-swale will be provided to contain part of the stormwater and to work as part of the stormwater management system.
• Provide a cistern to capture runoff during storm events and provide reuse opportunity to irrigate planting.
• The project will integrate a Blue roof to reduce urban heat island affect by evaporating rainwater back into the air for three days after the storm passes.
• The resilient topography will be sloped and pitched to manage the water quality interface between stormwater, groundwater and baywater.

• A perimeter swale will be constructed to contain storm and irrigation runoff water on the property.
• Information and education signage to be installed to inform and inspire the public about resilience and sustainability efforts being made in the property.]

EXHIBIT "G"
FORM OF MARINA LEASE

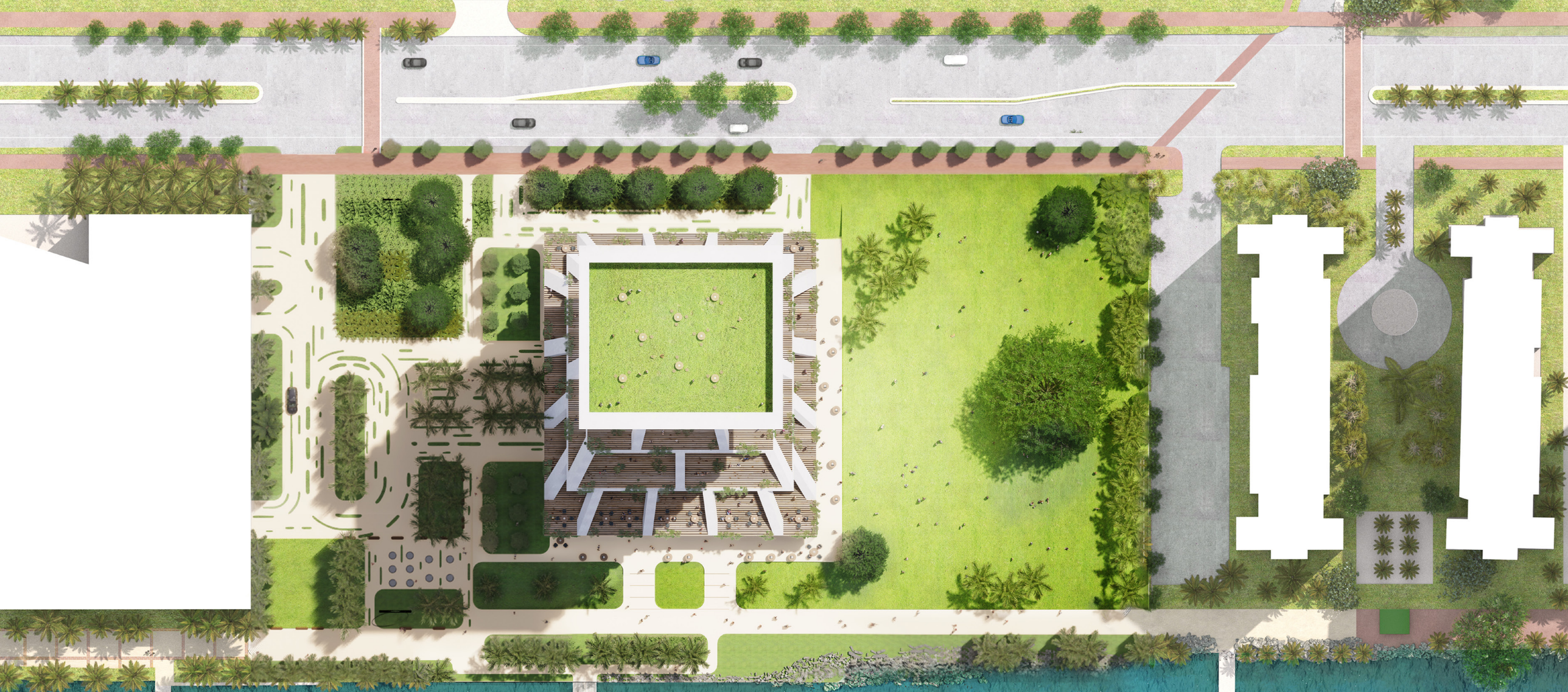
[See Exhibit 5 to June 24, 2020 Commission Memorandum]

EXHIBIT "H"

[To be Provided]

EXHIBIT "I"
PROJECT CONCEPT PLAN

[see attached]



MARINA PARK - CONCEPT SITE PLAN

EXHIBIT "J"
FORM OF PURCHASE AND SALE AGREEMENT

[See Exhibit 4 to June 24, 2020 Commission Memorandum]

EXHIBIT "K"
FORM OF RECIPROCAL EASEMENT AGREEMENT

[To be included for Second Reading]

EXHIBIT "L"
LEGAL DESCRIPTION OF COMMERCIAL RETAIL PREMISES

[To be Provided]

EXHIBIT "M"

PRESENTLY PERMITTED DEVELOPMENT[14]

[To be updated by Planning Department]

EXHIBIT "N"
REQUIRED DEVELOPMENT PERMITS AND VARIANCES[15]

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Agreement:

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development Agreement, including but not limited to restrictive covenants in lieu of unity of title

[15] City to confirm and/or update.

EXHIBIT "O"
PUBLIC FACILITIES[16]
[To be updated by Planning Department]

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami- Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, the City of Miami Beach, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(13) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of the obligation to comply with Section 163.3180, Florida Statutes.

[16] City to update.

EXHIBIT "P"
PUBLIC RESERVATIONS AND DEDICATIONS

None, except for any easements or reservations contemplated under Section 2.11(o), 4.1(b) and 4.1(c).

EXHIBIT "Q"
[FORM OF TEMPORARY CONSTRUCTION AND ACCESS EASEMENT][17]

[17] Subject to parties' discussion of ownership of the Park.

EXHIBIT "R"
OWNERSHIP INTERESTS IN DEVELOPER

[see attached]

EXHIBIT "S"
CONSTRUCTION AGREEMENT REQUIRED CLAUSES

(a) "Contractor shall provide, prior to the commencement of its portion of the work, and maintain during the performance thereof, the insurance set forth on Exhibit "___" attached hereto and incorporated by reference herein. Contractor shall procure an appropriate clause in, or endorsement on, any policy of insurance carried by it pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery consistent with the release, discharge, exoneration and covenants not to sue contained herein. Original Certificates of Insurance, in quadruplicate (all of which shall be original signed counterparts) and including the City of Miami Beach, Florida (and any successor Owner), as additional insureds (the "Certificate of Insurance"), shall be furnished to Developer by Contractor prior to commencement of work, denoting all insurance required of Contractor pursuant to the terms of the Contract. The Contractor shall secure a Certificate of Insurance from each of its sub-contractors and/or suppliers with limits of liability equal to those carried by the Contractor, or as otherwise approved in advance by the City."

(b) "Contracts with Contractors having aggregate payments of $[_____] or more shall be required to deliver a payment bond and performance bond in the full amount of the guaranteed maximum price thereof, with a good and sufficient surety, in compliance with all applicable Governmental Requirements and in form and content Approved by the City Manager, or such other security as is reasonably acceptable to the City Manager, after consultation with the City Attorney."

(c) "Contractor hereby waives all rights of recovery, claims, actions or causes of action against the City of Miami Beach, Florida (and any successor Owner), and their respective elected and appointed officials (including, without limitation, the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, for any loss or damage to property of Contractor which may occur at any time in connection with the Project."

(d) "To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida, and its respective officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Agreement. Sums otherwise due to Contractor may be retained by Developer and/or City until all of City's claims for indemnification under this Agreement have been settled or otherwise resolved. Any amount withheld pursuant to this Section shall not be subject to payment of interest by City. The indemnification obligations set forth in this Section shall survive the termination and/or expiration of this Agreement."

(e) "Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project."

(f) ["Upon an Event of Default by Developer resulting in a termination of that certain Development Agreement between the City and Developer dated as of _____, 2020, this agreement shall be terminated."][18]

(g) "Nothing contained in this contract is in any way intended to be a waiver of the prohibition on Contractor's ability to file liens against property of the City of Miami Beach, Florida, or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments."

(h) "This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Contract, Contractor and Owner hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. Contractor shall specifically bind all subcontractors to the provisions of this Contract."

(i) "The City of Miami Beach, Florida, shall not be a party to this contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract."

(j) "Contractor hereby agrees that notwithstanding that Contractor performed work at the Development Site or any part thereof, the City of Miami Beach, Florida shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Development Site."

(k) "Contractor warrants that all materials and equipment included in the Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents and that such Work will provide proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same Work, Contractor further agrees to correct all Work found by Developer or the City of Miami Beach, Florida to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Plans and Specifications or other Contract Documents, as well as any damage to the Work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the applicable warranty period. Contractor shall collect and deliver to Developer and the City of Miami Beach, Florida any specific written warranties given by subcontractors or others as required by the Contract Documents (and such warranties shall be in addition to, and not substitutes for, those warranties mandated to be obtained pursuant to the Contract Documents). All such warranties shall commence upon Substantial Completion or such other dates as provided for in the Contract Documents, or unless the warranted Work is not completed or has been rejected, in which case the warranty for the Work shall commence on the completion or acceptance of the Work."

[18] To be confirmed.

(l) ”City shall have the right to inspect and copy, at City's expense, the books and records and accounts of Contractor which relate in any way to the Project and to conduct an audit of the financial and accounting records of Contractor. Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following Final Completion of the Project. During the Project and the three (3) year period following Completion of Construction, Contractor shall provide City access to its books and records upon seventy-two (72) hours written notice.”

(m) “Contractor shall, and shall cause all subcontractors to keep the Development Site reasonably free from accumulations of waste material or rubbish. Upon substantial completion of portions of the Work, Contractor shall and shall cause the appropriate subcontractors to remove all rubbish, tools, scaffolding and surplus materials from and about the Development Site and leave such Work area clean and ready for occupancy.”

(n) “To the extent permitted by law, no claim for damages or any claim, other than for an extension of time, shall be made or asserted against the City by reason of any delay including, without limitation, Unavoidable Delays. To the extent permitted by law, Contractor or its respective agents, employees, contractors, consultants or professionals shall not be entitled to claim, nor shall the City have any obligation to fund, a Change Order, and/or other claims(s) or request(s) for an increase to the Project budget, or other payment or compensation of any kind from the City, for direct, indirect, consequential, impact or other costs, expenses or damages, arising because of delay, disruption, interference or hindrance from any cause whatsoever, including but not limited to Unavoidable Delays.”

(o) “Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on Alton Road (subject only to closures for short time periods upon Approval by the City Manager as reasonably necessary to complete the Work), the neighboring properties, operations of the Miami Beach Marina and the Baywalk.”

Exhibit "T"
FORM OF PARK PROJECT USE AND ACCESS EASEMENT

[see attached]

EXHIBIT "U"
INSPECTOR GENERAL AUDIT RIGHTS

1. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

2. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Developer, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Agreement and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

3. Upon ten (10) days written notice to Developer, Developer shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Developer, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

4. The Inspector General shall have the right to inspect and copy all documents and records in Developer's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

5. Developer shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

i. If this Agreement is completely or partially terminated, Developer shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

ii. Developer shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

6. The provisions in this Exhibit shall apply to Developer, its officers, agents, employees, subcontractors and suppliers. Developer shall incorporate the provisions in this section in all subcontracts and all other agreements executed by Developer in connection with the performance of this Agreement.

7. Nothing in this Exhibit shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this Exhibit are neither intended nor shall they be construed to impose any liability on the City by Developer or third parties.