

EXHIBIT 4

DISCUSSION DRAFT 6/8/2020

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is executed on the ____ day of ____, 2020, by and between **THE CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation (“**Seller**” or the “**City**”), and _____ (“**Purchaser**”).

RECITALS

A. Seller owns fee title to the parcel of air and the property located in the County of Miami-Dade, State of Florida, and which is legally described on **Schedule A-1** attached hereto and made a part hereof (the “**Residential Parcel**”).

B. Seller 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**”). Seller 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 Seller and its inhabitants.

C. After Seller having fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act, Seller has agreed to enter into this Agreement with the Purchaser.

D. On ____, 2020, the Mayor and City Commission, by Resolution No. 2020-_____, approved the execution of this Agreement.

E. Seller desires to sell, and Purchaser desires to purchase, the Residential Parcel, upon the terms and covenants and subject to the conditions set forth below in 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:

AGREEMENT

ARTICLE I

Voter Referendum, Effective Date and Definitions

1.1 **Voter Referendum Requirement.** The parties acknowledge and agree that, pursuant to Section 1.03(b)(1) of the City Code, this Agreement and the obligations herein 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 Purchaser may, within 90 days after the date on which it is determined that the 2020 Referendum was not successful, request that City Commission consider adopting a resolution calling for a special election for approval of this Agreement in a 2021 Referendum. If (a) the City Commission declines to adopt a resolution calling for approval of this Agreement in a 2021 Referendum or (b) within such ninety (90) day period, Purchaser either fails to so notify Seller or notifies Seller that it wishes to terminate this Agreement, then in any such event, this Agreement shall be deemed null and void, the Deposit shall be returned to Purchaser and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder. In the event that, following

Purchaser'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, the Deposit shall be returned to Purchaser and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

1.2 Effective Date. If a Referendum is successful and all requirements of the City Code and applicable law are satisfied, and the City Commission adopts a resolution accepting the certification of the official results of the applicable election with respect to the applicable Referendum, then this Agreement shall be effective on the date such resolution is adopted (the "**Effective Date**").

1.3 Definitions. Unless otherwise defined herein, any term capitalized in this Agreement shall have the meanings set forth on **Schedule B** to this Agreement.

1.4 Seller's Authority. In all respects hereunder, Seller's obligations and performance is pursuant to Seller's position as the fee owner of the Residential Parcel and the Project Site acting in its proprietary capacity. In the event Seller 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 Seller's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to Seller's regulatory authority as a governmental body and shall not be attributable in any manner to Seller as a party to this Agreement or in any way be deemed in conflict with, or a default under, Seller's obligations hereunder.

ARTICLE II

Purchase and Sale of the Residential Parcel

2.1 Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Residential Parcel all in accordance with the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The total purchase price (the "**Purchase Price**") for the Residential Parcel shall be equal to Fifty-Five Million and No/100 Dollars (\$55,000,000.00). The Purchase Price shall be payable as follows:

(a) First Deposit. Not later than thirty (30) days after [describe affirmative vote at July 29 commission hearing], Purchaser shall deliver to Escrow Agent, by wire transfer of immediately available funds, a deposit in the amount of One Million and No/100 Dollars (\$1,000,000.00) (the "**First Deposit**"), which shall be held in escrow by Escrow Agent pursuant to the terms and conditions of this Agreement.

(b) Additional Deposit. Not later than thirty (30) days after the Effective Date, Purchaser shall deliver to Escrow Agent, by wire transfer of immediately available funds, an additional deposit in the amount of Four Million and No/100 Dollars (\$4,000,000.00) (the "**Additional Deposit**"), which shall be held in escrow by Escrow Agent pursuant to the terms and conditions of this Agreement (the First Deposit and the Additional Deposit (when funded), together with any and all interest and dividends earned thereon, are herein collectively referred to as the "**Deposit**"). The Deposit will be held with an institution the deposits in which are insured by the Federal Deposit Insurance Corporation, or upon joint instruction of Seller and Purchaser, invested in securities of the United States. Purchaser accepts all risk with respect to such account. The Deposit shall be delivered to Seller or returned to Purchaser in accordance with the terms and conditions of this Agreement.

(c) Balance. The balance of the Purchase Price shall be paid on the Closing Date via a purchase money first mortgage loan from Seller to Purchaser in the amount of Fifty Million and No/100 Dollars (\$50,000,000.00) (the "**PM Loan**"), which is the balance of the Purchase Price (after crediting the Deposit). The terms of the PM Loan shall be as follows:

(i) The PM Loan shall be evidenced by a promissory note in the form attached hereto as **Exhibit A** and secured by the lien of a first mortgage on the Residential Parcel in the form attached hereto

as **Exhibit B** (collectively the “**PM Loan Documents**”). [The form and substance of the PM Loan Documents shall be reasonably acceptable to Seller and to Purchaser.]¹

(ii) The PM Loan shall be repaid as follows: (A) a principal payment in the amount of Five Million and No/100 Dollars (\$5,000,000.00) shall be due and payable on January 1, 2022, subject to extension as set forth in Section 14.6; (B) a principal payment in the amount of Five Million and No/100 Dollars (\$5,000,000.00) shall be due and payable on September 30, 2022, subject to extension as set forth in Section 14.6; and (C) the remaining outstanding principal balance shall be due and payable on that date that is the earlier of (y) ninety (90) days after Purchaser has obtained the Project Approvals or (z) the day that is fifty four (54) months after the Effective Date, subject to extension as set forth in Section 14.6. There shall be no prepayment penalty or premium;

(iii) The PM Loan Documents shall require Purchaser to use diligent commercially reasonable good faith efforts to pursue and obtain the Project Approvals, and shall obligate Seller, in its proprietary capacity and not in its regulatory capacity as a governmental body, to reasonably cooperate with Purchaser’s efforts to obtain the Project Approvals. Without limiting the generality of the foregoing, the PM Loan Documents shall provide that within twenty-one (21) days after receiving a written request from Purchaser that is consistent with all Governmental Requirements, Seller, at Purchaser’s sole cost and expense (including Seller’s reasonable attorneys’ fees in reviewing any agreements), shall join Purchaser, Marina Lessee and Master Sublessee, as applicable, 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 or any portion thereof, which applications and agreements are necessary because Seller is the fee owner of Area 1 or tenant under the Submerged Land Lease, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement agreements, and demolition permits and applications for Design Review Board approval. Purchaser shall pay all fees and charges for all such applications. Failure of Seller to perform as requested within such twenty-one (21) day period shall be deemed a Seller Delay for the number of days of delay beyond such twenty-one (21) day period.

(iv) The PM Loan shall be non-interest bearing;

(v) Seller may accelerate the maturity date should any Transfer occur that is not a Permitted Transfer; and

(vi) Purchaser, at Purchaser’s sole cost and expense, shall deliver to Seller at Closing a loan title policy, in form and substance reasonably acceptable to Seller, issued by First American Title Insurance Company (or other reputable national title insurance company reasonably acceptable to Seller) in favor of Seller in the amount of the PM Note insuring the first lien priority of the PM Mortgage (the “**Seller Title Policy**”).

(d) Provided the appropriate IRS forms are delivered to Escrow Agent, following the collection of the Deposit, Escrow Agent shall, at the direction of Purchaser, invest the Deposit in an interest-bearing escrow account at a commercial bank in Miami, Florida, for the benefit of the Purchaser subject to disbursement in accordance with the terms and provisions of this Agreement.

ARTICLE III **Investigation of the Residential Parcel**

3.1 **No Due Diligence Period.** Purchaser acknowledges and agrees that it has performed all tests, investigations, studies, and diligence with respect to the Residential Parcel prior to the Effective Date and that the Purchaser shall have no right to terminate this Agreement and/or receive a refund of the Deposit except as expressly set forth in this Agreement.

3.2 **Access and Insurance.** To the extent Purchaser or any of its agents enter upon the Residential Parcel and/or the Project Site, Purchaser hereby agrees (a) to indemnify, protect and hold harmless Seller and its

¹ City would like to attach drafts for second reading of the City Commission.

officers, employees, agents and instrumentalities from and against any and all claims, demands, losses, costs, damages, expenses or liabilities for death or injury to persons or for physical damage to property, or for mechanics' or other liens, including reasonable attorneys' fees, relating to or arising out of Purchaser's entry upon the Residential Parcel and/or Project Site except to the extent caused by the gross negligence or willful misconduct of Seller or its officers, employees, agents or instrumentalities, and (b) to repair and restore the Residential Parcel and/or Project Site, as applicable, to substantially the same condition existing prior to any such entry by or for Purchaser. Prior to entering upon the Residential Parcel or Project Site, Purchaser, at its sole cost and expense, will furnish to Seller certificates of insurance issued by or on behalf of an insurance company authorized to do business in the State of Florida, which insurance company must have a Best rating of A- or better, and which certificates of insurance will evidence Purchaser's and its agents' commercial general liability insurance with respect to bodily injury and property damage, name Seller as an additional insured and have limits acceptable to Seller. The obligations under this Section 3.2 shall survive the Closing or any termination of this Agreement as provided herein.

ARTICLE IV **Title**

4.1 **Purchaser's Objections and Resolutions of Purchaser's Objections.** Prior to the Effective Date, Purchaser (i) obtained an ALTA title insurance commitment from Title Company for the Project Site bearing file no. 1062-4670862 with an commitment date of _____, including copies of all recorded exceptions to title referred to therein (collectively, the "**Title Commitment**") and (ii) received a survey of the Project Site prepared by Schwebke-Shiskin & Associates, Inc. bearing file no. AJ-4058 and with a latest revision date of [July 20, 2017]² (the "**Survey**", and together with the Title Commitment, the "**Title Documents**"). Purchaser conclusively accepts title in the form set forth in the Title Commitment and the Survey as of the date of execution of this Agreement by the parties.

4.2 **Title Updates.** Purchaser may from time to time cause the Title Documents to be updated and shall deliver copies of each such update to Seller promptly following receipt. Purchaser shall have the right to object to any matter(s) disclosed or contained in any such updates that are not caused by Purchaser and that adversely affect the development, construction, use, efficiency, marketability, or value of the Residential Parcel or the Project or any portion thereof within ten (10) Business Days after receipt of any such update (each, a "**Title Objection**"). If Purchaser has given Seller written notice of any Title Objection, then Seller may, in Seller's sole discretion, give Purchaser notice of those Title Objections which Seller is willing to endeavor to cure, if any; provided, however, that Seller shall have no obligation whatsoever to expend or agree to expend any funds, to undertake or agree to undertake any obligations or otherwise to cure or agree to cure any Title Objection except with respect to (i) liens secured by mortgages securing loans made to Seller and any security documents recorded in connection therewith, (ii) judgment liens against Seller and (iii) matters created by Seller on or after the Effective Date (collectively, "**Mandatory Cure Items**") which Seller agrees to have removed (or insured or bonded over to the Purchaser's reasonable satisfaction) on or before the Closing Date. The City has no obligation to cure any liens, encumbrances or matters arising or created by Existing Marina Lessee or any Existing Sublessee or any of their respective predecessors in interest, none of which are or shall be deemed to be Mandatory Cure Items. If Purchaser does not timely deliver notice of any Title Objection based on such update, all new exceptions shown in such update shall be conclusively deemed approved by Purchaser and shall be Permitted Exceptions hereunder. At either party's option, the date of Closing may be extended for a period not to exceed sixty (60) days for purposes of curing any Title Objection(s). In the event that Seller is unable to eliminate any Title Objection(s) as of the date of Closing, as the same may be extended under the preceding sentence, Purchaser shall have the option of either: (i) waiving such Title Objection(s) and proceeding to Closing without any adjustment in the Purchase Price except for the amount of any Mandatory Cure Items or (ii) terminating this Agreement in which event the Purchaser shall immediately receive a return of its Deposit, whereupon both parties shall be released from all further obligations under this Agreement.

4.3 **Permitted Exceptions.** The exceptions to title disclosed in the Title Commitment and any updates thereto, as approved or deemed approved by Purchaser hereunder, together with the Existing Lease and Existing

² Purchaser to confirm Survey will be revised to current date prior to signing and Title Commitment will be updated to include a Survey read, if required by the Title Company.

Subleases, shall be the “**Permitted Exceptions**” hereunder. Notwithstanding anything to the contrary contained herein, Seller shall discharge and remove any and all Mandatory Cure Items, and such Mandatory Cure Items shall not be Permitted Exceptions (whether or not Purchaser expressly objects to such Mandatory Cure Items).

4.4 Issuance of Title Policy. Delivery of title in accordance with the foregoing provisions shall be evidenced by the willingness of the Title Company to issue to Purchaser, at Closing, a 2006 ALTA form of extended coverage owner’s policy of title insurance insuring good, marketable, insurable title to the Residential Parcel in Purchaser in the amount of the Purchase Price, subject only to the Permitted Exceptions (the “**Title Policy**”). The issuance of the Title Policy shall be a condition to Purchaser’s obligation to close hereunder.

ARTICLE V

Seller’s Representations and Warranties

Seller represents, warrants and covenants to Purchaser as follows as of the Effective Date and Closing, all of which are expressly qualified by and subject to the terms of Section 1.1 above, the rights of Existing Lessee, the rights, if any, of any Existing Sublessees and the rights of each of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the RDA pursuant to the Submerged Land Lease (collectively, “**Seller’s Representations**”):

5.1 Authority. Seller is a Florida municipal corporation duly organized, validly existing and in good standing under the laws of the state of Florida. Seller has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Seller in connection with entering into this Agreement, and will be taken by Seller prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons and entities signing this Agreement and the other documents contemplated by this Agreement on behalf of Seller has the legal right, power and authority to bind Seller.

5.2 No Conflicts. The execution, delivery and performance by Seller of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any contract, agreement, judicial or administrative order, or any Law to which Seller or any portion of the Residential Parcel is bound.

5.3 Consents; Binding Obligations. No approval or consent is required from any person for Seller to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

5.4 No Actions. Except as set forth on Schedule 5.4 attached hereto, to Seller’s knowledge, there are no actions, suits, proceedings or claims pending, or contemplated or threatened, before any court, commission, regulatory body, administrative agency or other Governmental Authority with respect to the ability of Seller to consummate the transaction contemplated by this Agreement.

Except as expressly set forth in this Agreement or the Closing Documents, which Closing Documents shall be consistent with this Agreement and shall not impose any additional obligations on Seller not set forth in this Agreement, Purchaser hereby acknowledges and agrees that it is purchasing the Residential Parcel in its present “as is/where is” condition with all defects, and that, except as expressly set forth in this Agreement or in such Closing Documents, neither Seller nor any employee or agent of Seller has made or will make, either expressly or impliedly, any representations, guaranties, promises, statements, assurances or warranties of any kind concerning the Residential Parcel or this Agreement, including any with respect to the quality, physical condition, expenses, legal status, zoning, value, utility or development or operating potential of the Residential Parcel, the absence of any hazardous substances or hazardous materials on, in, under or near the Residential Parcel, or any other matter or thing affecting or relating to the Residential Parcel or this Agreement (including warranties of merchantability and/or of fitness for a particular purpose) which might be pertinent in considering whether to purchase the Residential Parcel

or to make and enter into this Agreement, and Purchaser hereby acknowledges that Seller has not made, and Purchaser has not relied upon, any such representations, and releases and discharges Seller, its successors and assigns, of and from any liability to Purchaser, its successors and assigns, existing or arising under the statutes, laws and regulations of the State of Florida.

Seller's Representations are acknowledged by Seller to be material and to be relied upon by Purchaser in proceeding with this transaction, and shall be deemed to have been remade by Seller as of the Closing Date; provided that Seller shall have the right to update the foregoing representations with respect to any Lawsuit or Marina Lawsuit filed with respect to Seller, the Residential Parcel or the Project Site, as applicable, of which Seller has knowledge, and no such update or change to Seller's representations and warranties shall be a default by Seller hereunder. Subject to the foregoing, Seller will not cause or suffer any action to be taken which would cause any of the foregoing representations or warranties to be untrue as of the Closing Date. Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to the Closing Date which causes a change in the facts relating to, or the truth of, any of the above representations or warranties; provided, however, that upon such notification, (i) Purchaser shall have the option to terminate this Agreement by delivering written notice thereof to Seller, in which case Escrow Agent shall return the Deposit to Purchaser, and this Agreement shall be of no further force or effect and neither party shall have any further rights or obligations hereunder (other than pursuant to any provision hereof which expressly survives the termination of this Agreement), and (ii) to the extent that any of the events or conditions described in such notification are caused as a result of a breach by Seller of this Agreement, Purchaser shall be entitled to all of the rights and remedies set forth in **Section 12.1**, it being expressly understood that Seller's obligation to provide such notification shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties, covenants or agreements under this Agreement.

ARTICLE VI

Purchaser's Representations and Warranties

Purchaser represents and warrants to Seller as of the Effective Date and Closing as follows (collectively, "**Purchaser's Representations**"):

6.1 **Authority**. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization. Purchaser has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Purchaser in connection with entering into this Agreement, and will be taken by Purchaser prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons and entities signing this Agreement and the other documents contemplated by this Agreement on behalf of Purchaser has the legal right, power and authority to bind Purchaser.

6.2 **No Conflicts**. The execution, delivery and performance by Purchaser of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement, operating agreement, indenture, deed of trust, mortgage, contract, agreement (oral or written), judicial or administrative order, or any Law to which Purchaser is bound.

6.3 **Consents; Binding Obligations**. Other than the Project Approvals, no approval or consent from any person (including any partners, shareholder, member, creditor, investor or Governmental Authority) is required for Purchaser to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Purchaser to consummate the transaction at Closing contemplated hereby. This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

6.4 **No Bankruptcy**. No petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under federal or state bankruptcy law is pending against or contemplated (or, to

Purchaser's knowledge, threatened) by or against Purchaser or any general partner or managing member of Purchaser.

6.5 Prohibited Person. Purchaser is not a Prohibited Person.

6.6 No Actions. [Except as set forth on Schedule 6.6 attached hereto, there] [There] are no actions, suits proceedings or claims pending, or to Purchaser's knowledge, contemplated or threatened, before any court, commission, regulatory body, administrative agency or other Governmental Authority with respect to the ability of Purchaser to consummate the transaction contemplated by this Agreement.

Purchaser's Representations are acknowledged by Purchaser to be material and to be relied upon by Seller in proceeding with this transaction, and shall be deemed to have been remade by Purchaser as of the Closing Date. Purchaser will not cause or suffer any action to be taken which would cause any of the foregoing representations or warranties to be untrue as of the Closing Date. Purchaser shall promptly notify Seller, in writing, of any event or condition known to Purchaser which occurs prior to the Closing Date which causes a change in the facts relating to, or the truth of, any of the above representations or warranties; provided, however, that upon such notification, (i) Seller shall have the option to terminate this Agreement by delivering written notice thereof to Purchaser, in which case Escrow Agent shall disburse the Deposit to Seller, and this Agreement shall be of no further force or effect and neither party shall have any further rights or obligations hereunder (other than pursuant to any provision hereof which expressly survives the termination of this Agreement), and (ii) to the extent that any of the events or conditions described in such notification are caused as a result of a breach by Purchaser of this Agreement, Seller shall be entitled to all of the rights and remedies set forth in Section 12.1, it being expressly understood that Purchaser's obligation to provide such notification shall in no way relieve Purchaser of any liability for a breach by Purchaser of any of its representations, warranties, covenants or agreement under this Agreement.

ARTICLE VII

Seller's Undertakings

7.1 Prohibited Actions. Until the earlier of Closing or termination of this Agreement, Seller agrees as follows:

(a) Without Purchaser's prior written approval, which may be withheld in Purchaser's sole and absolute discretion, Seller shall not directly or indirectly, other than the REA, the Marina Lease and the Recognition Agreement and subject to the rights of Existing Marina Lessee and the rights, if any, of any Existing Sublessees, (i) sell, lease, contribute, assign or create any right, title or interest whatsoever in or to the Residential Parcel or any portion thereof or the balance of the Project Site or any portion thereof, (ii) enter into any agreements that encumbers the Residential Parcel or any portion thereof or the balance of the Project Site or any portion thereof, including, but not limited to mortgage and security agreements, promissory notes, and assignments, or cause or knowingly permit any mortgage, deed of trust, Lien, assessment, obligation, interest, encroachment or liability whatsoever encumbering Seller's interest in the Residential Parcel or the Project Site to be placed of record against the Residential Parcel or any portion thereof or the balance of the Project Site or any portion thereof, (iii) enter into any new (or extend, amend, renew or replace any existing) agreement, contract, permit or obligation affecting the Residential Parcel or any portion thereof or the balance of the Project Site or any portion thereof which would be binding upon Purchaser, the Marina Lessee or the Master Sublessee or (iv) enter into any agreement to do any of the foregoing.

(b) Seller shall not commence or allow to be commenced on its behalf any action, suit or proceeding with respect to the Residential Parcel or any portion thereof or the balance of the Project Site or any portion thereof without the prior written consent of Purchaser, which Purchaser may withhold in its sole and absolute discretion; provided, however, if Seller is named in any such action, suit or proceeding, Seller may participate and defend or enter into an agreement with any other Person to defend Seller's interests in such action, suit or proceeding and may settle same, in each case, without Purchaser's consent.

7.2 Seller Cooperation. Within twenty-one (21) days after receiving a written request from Purchaser that is consistent with all Governmental Requirements, Seller, at Purchaser's sole cost and expense (including Seller's reasonable attorneys' fees in reviewing any agreements), and solely in Seller's proprietary capacity and not in its regulatory capacity as a governmental body, shall join Purchaser, Marina Lessee and Master Sublessee, as applicable, 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 or any portion thereof, which applications and agreements are necessary because Seller is the fee owner of Area 1 or tenant under the Submerged Land Lease, and which applications and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement agreements, and demolition permits and applications for Design Review Board approval. Purchaser shall pay all fees and charges for all such applications. Failure of Seller to perform as requested within such twenty-one (21) day period shall be deemed a "Seller Delay" for the number of days of delay beyond such twenty-one (21) day period.

7.3 Revisions to Legal Description. Seller and Purchaser acknowledge that the final legal description for the Residential Parcel is subject to revision based upon the Project Approvals and upon the final, as-built structures. Seller and Purchaser shall reasonably cooperate with one another from time to time after Closing, upon Purchaser's request and at Purchaser's expense, to correct the legal description to conform to Project Approvals and to conform to the final, as-built structures. Such cooperation shall include, without limitation, execution and delivery by each party to the other of special warranty deeds as required to correct the legal description to conform to the Project Approvals and to the final, as-built structures.

7.4 Existing Lease and Marina Lease. Notwithstanding anything to the contrary set forth herein, Seller shall receive and shall continue to receive all rents and other revenues under the Existing Lease until its expiration or termination, and thereafter, under the Marina Lease, if any. Purchaser hereby releases and disclaims any interest in each of the Existing Lease and the Marina Lease but agrees to accept title to the Residential Parcel subject to the terms of the Existing Lease and any Existing Subleases.

7.5 Survival. This ARTICLE VII shall survive Closing.

ARTICLE VIII

Purchaser's Obligation to Close

8.1 Purchaser's Conditions. Purchaser shall not be obligated to close hereunder unless each of the following conditions shall exist on the Closing Date:

(a) Title Policy. The Title Company shall issue (or shall be prepared and irrevocably and unconditionally committed to issue) the Title Policy as described in Section 4.4, subject to Purchaser's payment of the scheduled premium; in addition, Purchaser agrees that it will not take any action to prevent the Title Company from issuing the Title Policy or being prepared and irrevocably and unconditionally permitted to issue the Title Policy;

(b) Accuracy of Representations. Subject to Seller's right to update pursuant to Article V, all of the representations and warranties made by Seller in this Agreement or any of the Closing Documents shall be true, correct and complete in all material respects on and as of the Closing Date, and Seller will so certify;

(c) Seller's Performance. Seller shall have, in all material respects, (i) performed all covenants and obligations, and (ii) complied with all conditions, required by this Agreement to be performed or complied with by Seller on or before the Closing Date or each such covenant, obligation and condition shall be waived by Purchaser in writing and in its sole and absolute discretion prior to the Closing;

(d) No Actions or Proceedings. There shall be no Lawsuits or Marina Lawsuits.

(e) Marina Lease. The Marina Lease shall have been executed and delivered by Seller.

(f) REA. Seller and, if applicable, the RDA, shall have executed the REA and unconditionally delivered the REA into escrow with Escrow Agent, with the only condition to delivery to Purchaser being execution of the REA by Purchaser, Marina Lessee and Master Sublessee.

(g) Other Conditions. Any document or delivery required to be delivered by Seller pursuant to **Section 10.2** shall have been delivered in accordance with **Section 10.2**.

8.2 Failure of Conditions. If any condition specified in **Section 8.1** is not satisfied on or before the Closing Date, Purchaser may, at its option, and in its sole and absolute discretion, (a) extend the Closing Date for a period not to exceed forty two (42) months to allow time within which for Purchaser to resolve any Lawsuit or Marina Lawsuit, (b) waive any such condition and proceed to Closing without adjustment or abatement of the Purchase Price, or (c) terminate this Agreement by written notice thereof to Seller, in which case Escrow Agent shall return the Deposit to Purchaser. In addition to (and notwithstanding) the foregoing, if the failure of the condition is due to a breach by Seller hereunder, Purchaser may pursue any of its remedies under **Section 12.1** (subject to applicable notice and cure periods), and if the failure of the condition is due to a breach by Purchaser hereunder, Seller may pursue any of its remedies under **Section 12.2** (subject to applicable notice and cure periods). Purchaser acknowledges and agrees that Seller does not undertake and shall have no obligation to undertake any action with respect to any Lawsuit or any Marina Lawsuit.³

ARTICLE IX

Seller's Obligation to Close

9.1 Seller's Conditions. Seller shall not be obligated to close hereunder unless each of the following conditions shall exist on the Closing Date:

(a) Accuracy of Representations. All of the representations and warranties made by Purchaser in this Agreement or any of the Closing Documents shall be true, correct and complete in all material respects on and as of the Closing Date, and Purchaser will so certify; and

(b) Purchaser's Performance. Purchaser shall have, in all material respects, (i) performed all covenants and obligations and (ii) complied with all conditions, required by this Agreement to be performed or complied with by Purchaser on or before the Closing Date or each such covenant, obligation and condition shall be waived by Seller in writing and in its sole and absolute discretion prior to Closing.

(c) No Actions or Proceedings. There shall be no Lawsuits or Marina Lawsuits.

(d) Marina Lease. The Marina Lease shall have been executed and delivered by Marina Lessee. Purchaser shall cause Marina Lessee to execute and deliver the Marina Lease.

(e) REA. Purchaser, Marina Lessee and Master Sublessee shall have executed the REA and unconditionally delivered the REA into escrow with Escrow Agent, with the only condition to delivery to Seller being execution of the REA by Seller. For the avoidance of doubt, Purchaser shall cause Marina Lessee and Master Sublessee to execute and deliver the REA.

(f) Other Conditions. Any document or delivery required to be delivered or caused to be delivered by Purchaser pursuant to **Section 10.3** shall have been delivered in accordance with **Section 10.3**.

9.2 Failure of Conditions. If any condition specified in **Section 9.1** is not satisfied on or before the Closing Date, Seller may, at its option, and in its sole and absolute discretion, (a) waive any such condition which can legally be waived and proceed to Closing without adjustment or abatement of the Purchase Price, or (b) terminate this Agreement; provided that Seller shall not terminate this Agreement as a result of the failure of the condition set forth in **Section 9.1(c)** above for a period of forty-two (42) months after the originally scheduled

³ Parties to discuss unwinding of transaction if any Lawsuit or Marina Lawsuit is successful or any Project Approvals are not received and appropriate documents to address same.

Closing Date, provided that Purchaser is proceeding diligently and in good faith to defend such Lawsuit and/or Marina Lawsuit, as applicable, and is indemnifying, defending and holding harmless the City in connection therewith, all in accordance with the indemnification obligations of Developer under the Development Agreement, or (c) subject to applicable notice and cure periods, pursue any of its remedies under **Section 12.2**.

ARTICLE X

Closing

10.1 **Time of Closing.** Subject to the provisions of this Agreement, the closing of the transactions contemplated hereby (the “**Closing**”) shall take place on the Closing Date through an escrow with Escrow Agent, whereby Seller, Purchaser and their attorneys need not be physically present and may deliver documents by overnight air courier or other means. The “**Closing Date**” shall be March [____], 2021 or such other date as may be mutually acceptable to the Purchaser and the City Commission.

10.2 **Deliveries at Closing by Seller.** On or before the Closing, Seller, at its sole cost and expense, shall deliver to Purchaser the following, each dated as of the Closing Date, in addition to all other items and payments required by this Agreement to be delivered by Seller at the Closing:

(a) **Deed.** Seller shall execute and deliver an original duly executed and acknowledged special warranty deed conveying good and marketable fee simple title to the Residential Parcel to Purchaser, free of all Liens but subject only to the Permitted Exceptions, and otherwise in form and substance reasonably acceptable to Seller and Purchaser (the “**Deed**”).

(b) **Non-Foreign Affidavit.** Seller shall execute and deliver an original duly executed Non-Foreign Affidavit in a form reasonably satisfactory to Seller, Purchaser and the Title Company.

(c) **Title Affidavits.** Seller shall execute and deliver to the Title Company a customary title affidavit as may be reasonably required by the Title Company in order to issue the Title Policy as described in **Section 4.4**, including as may be required by the Title Company in order to issue a gap endorsement and delete all standard exceptions to the Title Policy, including, without limitation, the exceptions related to the parties in possession and mechanic’s lien but excluding any exception for survey matters.

(d) **Marina Lease.** Seller shall execute and deliver two counterparts of the Marina Lease, and shall cause the RDA to execute two counterparts of the joinder thereto, if applicable.

(e) **Recognition Agreement.** Seller shall execute and deliver two counterparts of the Recognition Agreement, and shall cause the RDA to execute two counterparts thereof, if applicable; provided, however, that if the Recognition Agreement is not delivered by Seller or the RDA because it is not in form and substance acceptable to Seller or the RDA, then the delivery of the Recognition Agreement by Seller shall not be a condition to Closing.

(f) **REA.** Seller shall execute and deliver two counterparts of the REA.

(g) **Closing Statement.** Seller shall deliver two duly executed counterparts of a settlement statement of all allocations, closing costs and payments of moneys related to the Closing of the transactions contemplated by this Agreement (the “**Closing Statement**”).

(h) **Recertification.** Seller shall deliver a certification that all of Seller’s Representations are true and correct in all material respects as of the Closing Date, subject to the Seller’s right to update pursuant to **Article V** hereof.

(i) **Other Documents.** Seller shall, as reasonably requested by Purchaser, the Title Company or the Escrow Agent, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably acceptable to Seller

and reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

10.3 Deliveries at Closing by Purchaser. On or before the Closing, Purchaser, at its sole cost and expense, shall deliver to Escrow Agent the following, each dated as of the Closing Date, in addition to all other items and payments required by this Agreement to be delivered by Purchaser at the Closing:

(a) Purchase Price. Purchaser shall direct Escrow Agent to deliver the Deposit to Seller, and Purchaser shall execute and deliver the PM Loan Documents to Seller.

(b) Seller Title Policy. Purchaser shall cause the Title Company to issue (or be prepared and irrevocably and unconditionally committed to issue) the Seller Title Policy as described in **Section 2.2(c)(vi)**.

(c) PM Loan Documents. Purchaser shall execute and deliver the PM Loan Documents.

(d) REA. Purchaser shall deliver two duly executed counterparts of the REA, and shall cause the Marina Lessee and the Master Sublessee to execute and deliver two counterparts of the REA.

(e) Master Sublease. Purchaser also shall cause the Master Sublessee to execute and deliver two counterparts of the Master Sublease.

(f) Marina Lease. Purchaser shall cause the Marina Lessee to execute and deliver two counterparts of the Marina Lease.

(g) Recognition Agreement. Purchaser shall cause Marina Lessee and Master Sublessee to execute and deliver two counterparts of the Recognition Agreement.

(h) Proof of Authority. Purchaser shall provide such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Purchaser as may be reasonably required by Title Company, Seller or both.

(i) Closing Statement. Purchaser shall deliver two duly executed counterparts of the Closing Statement.

(j) Other Documents. Purchaser shall, as reasonably requested by Seller, the Title Company or the Escrow Agent, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

ARTICLE XI

Closing Expenses

11.1 Closing Costs. Whether or not the transactions contemplated by this Agreement are consummated, Purchaser shall pay its own and Seller's costs and expenses arising in connection with this Agreement, including the Closing (including its own and Seller's attorneys' and advisors' fees, charges and disbursements), except the costs set forth in this Section which shall be allocated between the parties as set forth herein. Seller shall pay (i) the costs of curing those title objections that Seller has cured, if any, and (ii) the cost of discharging any Mandatory Cure Items and recording any instruments in connection therewith. Purchaser shall pay for (a) recording the Deed, (b) the premium for the Title Policy and the Seller Title Policy, (c) any documentary, transfer, surtax, stamp, sales, use, gross receipts or similar taxes related to the transfer of the Residential Parcel and (d) all PM Loan costs including, without limitation, documentary stamp taxes, intangible taxes, recording fees, title insurance fees and purchaser/borrower's attorneys' fees.

11.2 Survival. This **ARTICLE XI** shall survive Closing or earlier termination of this Agreement.

ARTICLE XII

Remedies

12.1 Breach by Seller. Seller shall be in default hereunder if: (a) any representation or warranty made by Seller is or becomes false in any material respect; or (b) Seller fails to cure (within the time frame set forth below) any breach of any obligation of Seller under this Agreement. If Seller defaults on any provision hereof, Purchaser, as a condition precedent to the exercise of its remedies or termination of this Agreement, shall be required to give Seller written notice of the same. Seller shall have 10 Business Days from the receipt of such notice to cure the default. If Seller timely cures the default, the default shall be deemed waived and this Agreement shall continue in full force and effect. If Seller fails to timely cure such default, Purchaser, at Purchaser's option, either may: (i) terminate this Agreement, in which event (A) the Deposit shall be returned to Purchaser and (B) both parties shall be discharged from all duties and performance hereunder, except for any obligations which by their terms survive any termination of this Agreement; OR (ii) pursue specific performance of Seller's obligations hereunder (without the necessity of proving irreparable harm or posting any security), including to convey the Residential Parcel as provided herein. If Purchaser elects to pursue specific performance pursuant to this Section 12.1 but specific performance as contemplated in this Section 12.1 is unavailable to Purchaser as a result of Seller having sold the Residential Parcel to a Person other than Purchaser or an affiliate thereof designated by Purchaser and approved by Seller, then and only then, Seller shall reimburse Purchaser for Purchaser's direct and actual damages, including without limitation all of its out-of-pocket costs and expenses (including reasonable attorneys' fees, costs and disbursements) related to the negotiation of this Agreement and the transactions contemplated hereby and Purchaser's due diligence.

12.2 Breach by Purchaser. Purchaser shall be in default hereunder if: (a) any representation or warranty made by Purchaser is or becomes false in any material respect; or (b) Purchaser fails to cure (within the time frame set forth below) any breach of any obligation of Purchaser under this Agreement. If Purchaser defaults on any provision hereof, Seller, as a condition precedent to the exercise of its remedies or termination of this Agreement, shall be required to give Purchaser written notice of the same. Purchaser shall have 3 Business Days from the receipt of such notice to cure the default. If Purchaser timely cures the default, the default shall be deemed waived and this Agreement shall continue in full force and effect. If Purchaser fails to timely cure such default, Seller shall be entitled to terminate this Agreement pursuant to the terms of this Section 12.2. IF SELLER TERMINATES THIS AGREEMENT PURSUANT TO THIS SECTION 12.2 DUE TO PURCHASER'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF, PURCHASER AND SELLER AGREE THAT SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX. THE PARTIES THEREFORE AGREE THAT, IN SUCH EVENT, SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, IS ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSIT ACTUALLY PAID OR REQUIRED TO BE PAID AS OF THE DATE OF SUCH BREACH (EXCLUSIVE OF INTEREST AND DIVIDENDS EARNED THEREON), IN WHICH CASE (A) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF PURCHASER AND SELLER HEREUNDER SHALL BE OF NO FURTHER FORCE OR EFFECT AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER OTHER THAN PURSUANT TO ANY PROVISION HEREOF WHICH EXPRESSLY SURVIVES THE TERMINATION OF THIS AGREEMENT, (B) ESCROW AGENT SHALL DELIVER THE DEPOSIT ACTUALLY PAID (EXCLUSIVE OF INTEREST AND DIVIDENDS EARNED THEREON), OR IF SUCH DEPOSIT IS REQUIRED TO BE PAID HEREUNDER AND PURCHASER HAS NOT DELIVERED TO ESCROW AGENT, THEN PURCHASER SHALL DELIVER SUCH DEPOSIT, TO SELLER PURSUANT TO SELLER'S INSTRUCTIONS, AND THE SAME SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES, AND (C) ESCROW AGENT SHALL DELIVER TO PURCHASER ALL INTEREST AND DIVIDENDS EARNED ON THE DEPOSIT.⁴ THE PARTIES HEREBY AGREE THAT THE AMOUNT OF THE DEPOSIT ACTUALLY PAID IS A FAIR AND REASONABLE ESTIMATE OF THE TOTAL DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT OF PURCHASER'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF. SELLER IRREVOCABLY WAIVES THE RIGHT TO SEEK OR OBTAIN ANY OTHER LEGAL OR EQUITABLE REMEDIES, INCLUDING THE REMEDIES OF DAMAGES AND SPECIFIC PERFORMANCE FOR PURCHASER'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF.

⁴ City will agree to Purchaser receiving interest on Deposit provided that all City costs and expenses in connection with this Agreement are paid whether or not Closing occurs.

ARTICLE XIII

Escrow

13.1 Escrow Agent is hereby appointed and designated to act as Escrow Agent hereunder and is instructed to hold and deliver, pursuant to the terms of this Agreement, the documents and funds to be deposited into escrow as provided in this Agreement.

13.2 Escrow Agent shall not be bound in any way by any other agreement or contract between Seller and Purchaser, whether or not Escrow Agent has knowledge thereof. Escrow Agent's only duties and responsibilities shall be to hold the Deposit and other documents delivered to it as agent and to dispose of the Deposit and such documents in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Escrow Agent shall have no responsibility to protect the Deposit, or to place the Deposit in an account that is not sufficiently FDIC insured, and shall not be responsible for any failure to demand, collect or enforce any obligation with respect to the Deposit or for any diminution in value of the Deposit from any cause, other than Escrow Agent's gross negligence or willful misconduct. Escrow Agent may, at the expense of Seller and Purchaser, consult with counsel and accountants in connection with its duties under this Agreement. Escrow Agent shall not be liable to the parties hereto for any act taken, suffered or permitted by it in good faith in accordance with the advice of counsel and accountants. Escrow Agent shall not be obligated to take any action hereunder that may, in its reasonable judgment, result in any liability to it unless Escrow Agent shall have been furnished with reasonable indemnity satisfactory in amount, form and substance to Escrow Agent.

13.3 Seller and Purchaser hereby indemnify Escrow Agent and hold it harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened, directly or indirectly, arising from, or in any way connected with, this Agreement, unless such claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings, or any such other expenses, fees, or charges, shall be due to willful and malicious breach of this Agreement or gross negligence on the part of Escrow Agent.

13.4 All parties to this Agreement acknowledge and agree that Escrow Agent shall not be liable to any party or person whomsoever for any action taken in good faith, including, but not limited to, the misdelivery to Purchaser or Seller of documents or funds subject to escrow hereunder, unless such action, including misdelivery, shall be due to willful and malicious breach of this Agreement or gross negligence on the part of Escrow Agent. Escrow Agent is acting as a stakeholder only with respect to the Deposit and other documents to be delivered hereunder. If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit or such documents or as to whom the Deposit or such documents are to be delivered, Escrow Agent shall not make any delivery, but shall hold the Deposit and such documents until receipt by Escrow Agent of an authorization in writing, signed by Seller and Purchaser, directing the disposition of the Deposit and such documents, or, in the absence of authorization, Escrow Agent shall hold the Deposit and such documents until the final determination of the rights of the parties in an appropriate proceeding. Escrow Agent shall have no responsibility to determine the authenticity or validity of any notice, instruction, instrument, document or other item delivered to it, and it shall be fully protected in acting in accordance with any written notice, direction or instruction given to it under this Agreement and believed by it to be authentic. If written authorization is not given, or proceedings for a determination are not begun, within thirty (30) days after the Closing Date and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Deposit and documents with a court of the State of Florida pending a determination. Escrow Agent shall be reimbursed for all costs and expenses of any action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements incurred in its capacity as Escrow Agent, by the non-prevailing party. Upon making delivery of the Deposit and documents in the manner provided in this Agreement, Escrow Agent shall have no further liability hereunder. In no event shall Escrow Agent be under any duty to institute, defend or participate in any proceeding that may arise between Seller and Purchaser in connection with the Deposit or documents.

13.5 Seller acknowledges that the Escrow Agent is Purchaser's attorney, and that Escrow Agent is hereby authorized to represent Purchaser and/or itself with respect to this transaction and in any litigation relating thereto and, in any event, Escrow Agent may continue to serve as both Escrow Agent and attorney for Purchaser. Seller shall not object to, and is hereby estopped from objecting to, such representation.

13.6 All notices required or permitted to be sent to Escrow Agent shall be in writing and shall be hand delivered or sent by recognized overnight courier (such as UPS or FedEx) addressed as follows: Laura Gangemi, Esq., Gangemi Law Group, PLLC, 3310 Mary Street, Suite 303, Miami, FL 33133, with a copy to laura@g-law.com, or to such other address as shall, from time to time, be supplied in writing by Escrow Agent. Any such notice shall be deemed given upon receipt by the addressees.

ARTICLE XIV **Miscellaneous**

14.1 **Brokers.** Seller and Purchaser each hereby represent, warrant to and agree with the other that it has not had, and it shall not have, any dealings with (and it has not engaged and it will not engage) any third party to whom the payment of any broker's fee, finder's fee, commission or similar compensation shall or may become due or payable in connection with the transactions contemplated hereby. Each party shall be responsible for, and shall indemnify and hold harmless the other with respect to, the payment of any commission claimed by or owed to any real estate broker or other Person retained by such party and which is entitled to a commission as a result of the execution and delivery of this Agreement. This provision shall survive the Closing or any termination of this Agreement.

14.2 **Expenses.** Subject to the payment of Closing costs pursuant to **Section 11.1** and any other provision of this Agreement, whether or not the transactions contemplated by this Agreement are consummated, all fees and expenses incurred by any party hereto in connection with this Agreement shall be borne by such party.

14.3 **Further Assurances.** Each of the parties hereto agrees to perform, execute and deliver such documents, writings, acts and further assurances as may be reasonably necessary to carry out the intent and purpose of this Agreement.

14.4 **Survival of Representations and Warranties.**

(a) All of Seller's and Purchaser's respective representations, warranties and covenants shall merge with and into the Deed.

(b) Intentionally Deleted.

14.5 **Partial Invalidity.** If any provision or term of this Agreement is determined to be unenforceable, such provision or term shall be reformed and enforced to the maximum extent permitted by Law. If it cannot be reformed, it shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portions and terms of this Agreement shall remain in full force and effect and shall, for all purposes, constitute this entire Agreement.

14.6 **Time of Essence.** Time shall be of the essence with respect to all matters contemplated by this Agreement. Notwithstanding the foregoing or anything to the contrary contained in this Agreement or the PM Loan Documents, any time periods, deadlines, due dates, performance dates and outside dates set forth in this Agreement and any time periods, deadlines, due dates, performance dates and outside dates set forth in the PM Loan Documents shall be tolled up to forty two (42) months in connection with Lawsuits and shall be reasonably extended for (i) a Force Majeure Event; and/or (ii) Seller Delays.

14.7 **Construction of Agreement.** All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party hereto based upon authorship.

14.8 **Amendments/Waiver.** No amendment, change or modification of this Agreement shall be valid unless the same is in writing and signed by Purchaser and Seller. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. No waiver of any provision shall be deemed a continuing waiver of such provision or of this Agreement.

14.9 Entire Agreement. This Agreement, together with the Exhibits and Schedules attached hereto and the Development Agreement, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, agreements, understandings, letters of intent and discussions (whether oral or written) between the parties, and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as expressly herein or therein set forth.

14.10 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement. Executed copies hereof may be delivered by facsimile, PDF, DocuSign or email, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by facsimile, PDF, DocuSign or email, the parties will deliver originals as promptly as possible after execution.

14.11 Dates. If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the Closing Date) should, under the terms hereof, fall on a non-Business Day, then such date shall be extended automatically to the next succeeding Business Day.

14.12 Governing Law/Jurisdiction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the state in which the Residential Parcel is located, without regard to the conflicts of laws principles thereof. With respect to any claim or action arising hereunder or under this Agreement, each of Seller and Purchaser (a) irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida located in Miami-Dade County, Florida, and the United States District Court located in Miami-Dade County, Florida and (ii) irrevocably waives any objection which it may have at any time to the laying on such venue of any suit, action or proceeding arising out of or relating to this Agreement.

14.13 Notices. All notices, consents, reports, demands, requests and other communications required or permitted hereunder ("**Notices**") shall be in writing, and shall be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by registered or certified U.S. mail, postage prepaid, return receipt requested; (d) sent by PDF or email with an original copy thereof transmitted to the recipient by one of the means described in subsections (a), (b) or (c). All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery; and provided further, however, that Notices given by PDF or email shall be deemed given when received. Each party shall be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof in the manner herein provided for the delivery of Notices. All Notices shall be sent to the addressee at its address set forth below:

To Seller:

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

To Purchaser:

3310 Mary Street
Suite 302
Coconut Grove, Florida 33133
Attention: David P. Martin and Ellen Buckley

With a copy to:

Gangemi Law Group, PLLC
3310 Mary Street
Suite 303
Miami, Florida 33133
Attention: Laura Gangemi, Esq.
E-mail: laura@g-law.com

Any notice required hereunder to be delivered to the Escrow Agent shall be delivered in accordance with above provisions as follows:

Gangemi Law Group, PLLC
3310 Mary Street
Suite 303
Miami, Florida 33133
Attention: Laura Gangemi, Esq.
E-mail: laura@g-law.com

Unless specifically required to be delivered to the Escrow Agent pursuant to the terms of this Agreement, no notice hereunder must be delivered to the Escrow Agent in order to be effective so long as it is delivered to the other party in accordance with the above provisions.

14.14 Headings/Use of Terms/Exhibits. The paragraph and section headings that appear in this Agreement are for purposes of convenience of reference only and are not to be construed as modifying, explaining, restricting or affecting the substance of the paragraphs and sections in which they appear. Wherever the singular number is used, and when the context requires, the same shall include the plural and the masculine gender shall include the feminine and neuter genders. The term “**including**” means “**including, but not limited to**” and “**such as**” means “**such as, but not limited to**” and similar words are intended to be inclusive. All references to Sections and articles mean the Sections and articles in this Agreement. All Exhibits and Schedules attached hereto are hereby incorporated herein by reference as though set out in full herein.

14.15 Assignment. Purchaser may assign all or any portion of this Agreement or its rights hereunder, or delegate all or any portion of its duties or obligations, without Seller’s written consent, provided that, prior to completion of construction of the Project in accordance with the Development Agreement, David Martin, shall continue, directly or indirectly, to direct the day-to-day management and policies of Purchaser (except for transfers due to lender foreclosures or deeds/assignments-in-lieu of foreclosure after Closing) and to own, directly or indirectly, at least ten percent (10%) of the ownership interest of Purchaser. After Closing, Purchaser shall also have the right to collaterally assign this Agreement to any lender providing financing for the Project or any portion thereof and the enforcement by any such lender of its rights under the financing documents shall not constitute an assignment of this Agreement requiring the consent of Seller. Purchaser shall give Seller notice of the assignment or delegation and such assignment or delegation shall not relieve Purchaser of its obligations hereunder. Seller shall not assign this Agreement or any rights hereunder, or delegate any of its obligations, without the prior written approval of Purchaser. Subject to the provisions of this section, this Agreement shall be binding upon and inure to

the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

14.16 Attorney's Fees. If litigation is required by either party to enforce or interpret the terms of this Agreement, the substantially prevailing party of such action or arbitration shall, in addition to all other relief granted or awarded by the court or arbitrator, be awarded costs and reasonable attorneys' fees, charges and disbursements (including those of in-house counsel) and expert witnesses fees and costs incurred by reason of such action or arbitration and those incurred in preparation thereof at both the trial or arbitration and appellate levels.

14.17 Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER AND PURCHASER 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.

[Signature Pages Follow]

IN WITNESS WHEREOF, Purchaser has caused this Agreement to be duly signed in its name, and the City 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.

PURCHASER

Signed, sealed and delivered
in the presence of

_____, LLC

Print Name:

By: _____
Name:
Title:

Print Name:

Signed, sealed and delivered
in the presence of

CITY

THE CITY OF MIAMI BEACH, FLORIDA, a
Florida municipal corporation

Print Name:

By: _____
Dan Gelber
Mayor

Print Name:

ATTEST

Approved for form and legal sufficiency

By: _____
City Clerk

By: _____
City Attorney

SCHEDULE A-1

LEGAL DESCRIPTION - RESIDENTIAL PARCEL

(attached hereto)

SCHEDULE A-2

LEGAL DESCRIPTION – AREA 1

All of Lots 22 through 31, inclusive, and Lot 21, LESS the Southerly 40.00 feet thereof, in Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida, TOGETHER WITH a 40.00 foot right-of-way on the Bay side of the Hope and Rebecca Tower Property, (being Lots 15 through 20 and the Southerly 40.00 feet of Lot 21, Block 111, of Ocean Beach, Florida Addition No. 3, **less and except** the Residential Parcel

SCHEDULE A-3

LEGAL DESCRIPTION – AREA 2

A portion of land lying West of and adjacent to Block 111, of OCEAN BEACH, FLORIDA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, at Page 81, of the Public Records of Miami-Dade County, Florida, more particularly described as follows; Commence at the Northwest corner of Section 3, Township 54 South, Range 42 East; Thence run Easterly along the North line of said Section 3 for 1,350.00 feet, more or less, to a point on the East line of Block 90 of the aforementioned Plat; Thence run South 00 degrees 30'00" E along the East line of Blocks 90, 89, 88, 87, 86, 85, 84, 83, 82, 81, 80, 79 and a portion of Block 111 and along their Southerly extensions for 5,207.00 feet to the Southeast corner of Lot 1, Block 111 of said Subdivision; Thence run S 89 degrees 05'00" W, along the South line of said Lot 1, Block 111 for 260.00 feet to a point on the East water line of Biscayne Bay, said point also being the POINT OF BEGINNING of the Tract of land hereinafter described; Thence run N 32 degrees 12' 16" W, along a line 300.00 feet West of and parallel with the Westerly right of way line of Alton Road for 2,159.28 feet to a point, Thence run N 28 degrees 29'08" W for 323.93 feet to an intersection with a line that is 35.00 feet Northerly of and parallel with the North line of a lot designated 49 B as shown on the AMENDED PLAT OF LOTS 43 TO 50, BLOCK 111, OCEAN BEACH, FLA., ADDITION NO. 3, as recorded in Plat Book 14, at Page 70, of the Public Records of Miami-Dade County, Florida; Thence run N 88 degrees 07'28" W for 35.69 feet; Thence run S 57 degrees 47'44" W for 254.60 feet; Thence run N 32 degrees 12'16" W for 20.00 feet; Thence run S 57 degrees 47'44" W for 300.00 feet to a point; Thence run S 32 degrees 12' 16" E for 1,154.00 feet to a point; Thence run S 57 degrees 47'44" W for 150.00 feet to a point; Thence run S 32 degrees 12' 16" E for 500.00 feet to a point; Thence run N 57 degrees 47'44" E for 150.00 feet to a point; Thence run S 32 degrees 12' 16" E for 912.00 feet to a point; Thence run S 67 degrees 48'22" E for 347.79 feet to a point; Thence run N 57 degrees 47'44" E for 360.62 feet, more or less, to other lands of The City of Miami Beach; Thence run N 32 degrees 11 '37" W for 326.25 feet, more or less, by other lands of The City of Miami Beach, to the POINT OF BEGINNING

SCHEDULE B

DEFINITIONS

“**2020 Referendum**” has the meaning ascribed to it in **Section 1.1**.

“**2021 Referendum**” has the meaning ascribed to it in **Section 1.1**.

“**Additional Deposit**” has the meaning set forth in **Section 2.2(b)**.

“**Agreement**” has the meaning set forth in the introductory paragraph.

“**Area 1**” means the property legally described on Schedule A-2 attached hereto and by this reference made a part hereof.

“**Area 2**” means the property legally described on Schedule A-3 attached hereto and by this reference made a part hereof.

“**Business Day**” means each day of the year other than Saturdays, Sundays, legal holidays and days on which banking institutions are generally authorized or obligated by Law to close in either the state of Florida or the state in which the Residential Parcel is located.

“**City**” has the meaning set forth in the introductory paragraph.

“**City Code**” has the meaning set forth in the Recitals.

“**City Commission**” means the governing and legislative body of the City.

“**Closing**” has the meaning set forth in **Section 10.1**.

“**Closing Date**” has the meaning set forth in **Section 10.1**.

“**Closing Documents**” means those documents required to be delivered by Seller or Purchaser at the Closing pursuant to **Sections 10.2** and **10.3** or pursuant to or in connection with any other provision of this Agreement.

“**Closing Statement**” has the meaning set forth in **Section 10.2(g)**.Error! Reference source not found.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Deed**” has the meaning set forth in **Section 10.2(a)**.

“**Deposit**” has the meaning set forth in **Section 2.2(b)**.

“**Design Review Board**” means the Design Review Board of the City of Miami Beach

“**Development Agreement**” means that certain Development Agreement 2020-_____-_____ for the development of the Marina Park Project dated as of the date hereof by and between Seller and Marina Park, LLC, a Florida limited liability company and _____, a _____, collectively, jointly and severally, as “Developer” and having an effective date, subject to Section 1.1 hereof, as of the Effective Date.

“**Effective Date**” has the meaning set forth in the **Section 1.2**.

“**Escrow Agent**” means Gangemi Law Group, PLLC.

“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.

“Existing Subleases” means any subleases of the Existing Marina Lease, whether executed and delivered by Existing Marina Lease or any of its predecessors in interest.

“Existing Sublessees” means the sublessees under the Existing Subleases.

“First Deposit” has the meaning set forth in **Section 2.2(a)**.

“Force Majeure Event” means the following: 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 no event shall “Force Majeure Event” include economic hardship or financial inability to perform specific to the party.

“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 Project Site or any portion thereof.

“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 Project Site or any portion thereof.

“Laws” means all federal, state and local laws, statutes, codes, regulations, rules, ordinances, orders, policy directives, judgments or decrees (including common law), including those of judicial and administrative bodies.

“Lawsuits” has the meaning set forth in the Development Agreement.

“Liens” means liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, pledges, judgments or other similar matters.

“Losses” means all actual damages (excluding consequential, speculative, punitive and similar damages), losses, liabilities, claims, actions, interest, penalties, demands, obligations, judgments, expenses or costs (including reasonable attorneys’ fees, charges and disbursements (but excluding those of in-house counsel), and appeals, and expert witness fees).

“Mandatory Cure Items” has the meaning set forth in **Section 4.2**.

“Marina Lease” means a certain Ground Lease Agreement to be executed between Seller, as lessor, joined in by the RDA, if applicable, and Marina Lessee, as lessee, in form and substance acceptable to Purchaser and Seller.

“Marina Lessee” means _____, LLC, and its successors and assigns that are permitted under or approved in accordance with the terms of the Marina Lease.

“Master Sublease” means a Master Sublease Agreement to be executed between Marina Lessee, as Sublessor, and Master Sublessee, as sublessee, in form and substance acceptable to Purchaser and Seller.

“Master Sublessee” means _____, LLC, and its successors and assigns that are permitted under or approved in accordance with the terms of the Master Sublease.

“Notices” has the meaning set forth in **Section 14.13**.

“Permitted Exceptions” has the meaning set forth in **Section 4.3**.

“Permitted Transfer” means any Transfer to any Person provided that David Martin shall continue, directly or indirectly, to direct the day-to-day management and policies of Purchaser and own, directly or indirectly, at least ten percent (10%) of the ownership interest of Purchaser.

“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.

“PM Loan” has the meaning set forth in **Section 2.2(c)**.

“PM Loan Documents” has the meaning set forth in **Section 2.2(c)(i)**.

“Prohibited Person” means any of the following: 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

“Project” has the meaning set forth in the Development Agreement.

“Project Approvals” has the meaning set forth in the Development Agreement.

“Project Site” means, collectively, Area 1, Area 2 and the Residential Parcel.

“Purchase Price” has the meaning set forth in **Section 2.2**.

“Purchaser” has the meaning set forth in the introductory paragraph.

“RDA” means the Miami Beach Redevelopment Agency, a public agency organized and existing pursuant to the Community Redevelopment Act of 1969, as amended, Chapter 163, Part III, Florida Statutes.

“REA” means a certain Reciprocal Easement and Operating Agreement in the form attached hereto as **Schedule C** and made a part hereof.

“Recognition Agreement” means that certain recognition agreement by and among Seller, Marina Lessee and Marina Sublessee, in form and substance acceptable to Seller, Marina Lessee and Marina Sublessee.

“Referendum” has the meaning ascribed to it in Section 1.1.

“Residential Parcel” means the real property described on **Schedule A-1**, together with all reversions, remainders, privileges, easements, rights-of-way, appurtenances, agreements, rights, licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with said real property, together with all of Seller’s right, title and interest in and to any strips and gores of land, streets, alleys, public ways or rights-of-way abutting, adjoining, adjacent, connected or appurtenant to such real property, and together with any and all development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps (or their equivalents), and sanitary or storm sewer capacity appertaining to or otherwise benefiting or used in connection with said real property.

“Seller” has the meaning set forth in the introductory paragraph.

“Seller Delay” means the number of days in which Seller performs any obligation under **Section 7.2** hereof in excess of the number of days set forth for such performance therein.

“Seller’s Representations” has the meaning set forth in **ARTICLE V**.

“Seller Title Policy” has the meaning set forth in **Section 2.2(c)(vi)**.

“Submerged Land Lease” means that certain Submerged Land Lease effective as of April 28, 2010 between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, as lessor, and the City and RDA, collectively, as lessee, recorded on December 13, 2010 in Official Records Book 27519, Page 662 of the public records of Miami-Dade County, Florida.

“Survey” has the meaning set forth in **Section 4.1**.

“Survival Period” has the meaning set forth in **Section Error! Reference source not found.**

“Title Commitment” has the meaning set forth in **Section 4.1**.

“Title Company” means First American Title Insurance Company.

“Title Documents” has the meaning set forth in **Section 4.1**.

“Title Policy” has the meaning set forth in **Section 4.4**.

“Title Objection” has the meaning set forth in **Section 4.2**.

“Transfer” means any sale, assignment or conveyance of the Residential Parcel or any direct or indirect ownership interest in Purchaser.

SCHEDULE C

FORM OF REA

(attached hereto)

SCHEDULE 5.4

1. That certain case styled *Miami Beach Marina Associates, Ltd., vs. Monty's Sunset LLC*, Case No. 2019-033590-CA-01, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.