

EXHIBIT 4

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 **MARINA PARK RESIDENTIAL, LLC**, a Delaware limited liability company ("**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 Project 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 August 31, 2020, 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. Notwithstanding the foregoing, Purchaser shall not be in default hereunder for failure to deliver the First Deposit if, on or before such date, Marina Lessee has not unconditionally delivered its fully executed counterparts of the Marina Lease, Master Sublease, Recognition Agreement and REA with Escrow Agent, with the only condition to delivery to Purchaser and Seller hereunder being consummation of Closing, and should Marina Lessee fail to do so, then Purchaser may terminate this Agreement on written notice to Seller on or before August 31, 2020, whereupon this Agreement shall be of no further force or effect and neither party shall have any further rights or obligations hereunder.

(b) Additional Deposit. Not later than the later of (i) January 31, 2021 or (ii) 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 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. 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 **Schedule D** and secured by the lien of a first mortgage on the Residential Parcel in the form attached hereto as **Schedule E** (collectively the "**PM Loan Documents**").

(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; (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 1, 2022; and (C) the remaining outstanding principal balance shall be due and payable on the day on which all of the Construction Commencement Conditions have been satisfied (the "**Maturity Date**"). Except as set forth in clauses (A) and (B) above, there shall be no prepayment of the PM Loan;

(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 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 Project Approvals and other approvals, permits and agreements as may be commercially reasonably necessary for developing and constructing the Project or any portion thereof, which applications, permits and agreements are necessary because Seller is the fee owner of Area 1 or tenant under the Submerged Land Lease, and which applications, permits 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, which joinder shall be delivered by Seller within fifteen (15) days with respect to all such applications for Project Approvals and within five (5) days following the parties' agreement with respect to any covenants, easements, permits or other agreements required in connection with such Project Approvals or the Project. Purchaser shall pay all fees and charges for all such applications. Failure of Seller to perform as requested within such fifteen (15) or five (5) day period, as applicable, shall be deemed a Seller Delay for the number of days of delay beyond such fifteen (15) or five (5) day period, as applicable, and shall not be a Seller default hereunder provided the period of delay does not exceed one hundred twenty (120) days;

(iv) The PM Loan shall be non-interest bearing through 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 (the "**Interest Commencement Date**"), subject to extension as set forth in Section 15.6, and thereafter the PM Loan shall bear interest as set forth in the PM Loan Documents. Interest shall accrue and shall be payable on the Maturity Date;

(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 an ALTA loan title policy in form and substance reasonably acceptable to the City, 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 prior to Closing and/or the Project Site, Purchaser hereby agrees (a) to indemnify, protect and hold harmless

Seller and its officers, employees, agents and instrumentalities from and against any and all claims, demands, losses, costs, actual 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, 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 Residential Parcel bearing file no. 1062-4670862A with a commitment date of July 1, 2020 at 8:00 a.m., 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-4058A and with a latest revision date of May 14, 2020 (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 (subject to Purchaser's right to make Title Objections with respect to any matters first arising after the effective date of the Title Commitment and shown on an update thereto as expressly set forth in Section 4.2).

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 without Purchaser's written consent (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 Subleases, the Development Agreement and the REA, 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 as set forth in Section 8.1(a).

ARTICLE V

Seller's Representations and Warranties

Seller represents, warrants and covenants to Purchaser as follows as of the Effective Date (except as otherwise set forth below) and Closing, all of which are expressly qualified by and subject to the terms of Section 1.1 above, the rights of Existing Lessee, and the rights, if any, of any Existing Sublessees (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, as of the date Seller executes this Agreement, there are no actions, suits, proceedings or claims pending against Seller, or to Seller's knowledge, contemplated or threatened against Seller, 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, other than as expressly set forth in this Agreement or the Closing Documents, 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 set forth in Section 5.4 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 [OPEN: (except an update notifying Purchaser of a Marina Lawsuit)], (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 (except as otherwise set forth below) 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.** No approval or consent is needed from any of Purchaser's direct or indirect partners, shareholders, members, managers, creditors or investors that has not been obtained 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. For avoidance of doubt, this representation does not include approvals or consents needed in connection with the development or construction of the Project, including Project Approvals. 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. As of the date Purchaser executes this Agreement, 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; provided that Purchaser shall have the right to update the representations set forth in Section 6.6 with respect to any Lawsuit or Marina Lawsuit, and no such update or change to Purchaser's representations and warranties set forth in Section 6.6 shall be a default by Purchaser hereunder. Subject to the foregoing, Purchaser will not cause or suffer any action to be taken which would cause any of the representations or warranties set forth in Sections 6.1 – 6.5 to be untrue as of the Closing Date or, except in connection with any declaratory or similar action filed by Purchaser, Existing Marina Lessee and/or Marina Lessee with respect to any Marina Lawsuit, to cause any of the representations or warranties set forth in Section 6.6 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 (except an update notifying Seller of a Lawsuit or Marina Lawsuit), (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 12.2, 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 Seller of any of its representations, warranties, covenants or agreements 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, the Recognition Agreement and the PM Loan Documents, and subject to the rights of Existing Marina Lessee under the Existing Marina Lease and the rights, if any, of any Existing Sublessees under the Existing Subleases and under the Existing Recognition Agreements, (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, provided that any such settlement is not binding on Purchaser.

7.2 Seller Cooperation. 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 Project Approvals and other approvals, permits and agreements as may be commercially reasonably necessary for developing and constructing the Project or any portion thereof, which applications, permits and agreements are necessary because Seller is the fee owner of Area 1 or tenant under the Submerged Land Lease, and which applications, permits 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, which joinder shall be delivered by Seller within fifteen (15) days with respect to all such applications for Project Approvals and within five (5) days following the parties' agreement with respect to any covenants, easements, permits or other agreements required in connection with such Project Approvals or the Project. Purchaser shall pay all fees and charges for all such applications. Failure of Seller to perform as requested within such fifteen (15) or five (5) day period, as applicable, shall be deemed a Seller Delay for the number of days of delay beyond such fifteen (15) or five (5) day period, as applicable, and shall not be a Seller default hereunder provided the period of delay does not exceed one hundred twenty (120) days.

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 solely to Seller's right to update its representations and warranties set forth in **Section 5.4** 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) **[OPEN: No Actions or Proceedings. There shall be no Lawsuits.]**

(e) Marina Lease. The Marina Lease shall have been fully executed by Seller and the RDA, and Seller and the RDA shall have unconditionally delivered its counterpart of the Marina Lease into escrow with Escrow Agent, with the only conditions to delivery to Marina Lessee being consummation of Closing, and Seller agrees that it will not take any action to prevent the RDA from executing the Marina Lease.

(f) Recognition Agreement. The Recognition Agreement shall have been fully executed by Seller, and Seller shall have unconditionally delivered its counterpart of the Recognition Agreement into escrow with Escrow Agent, with the only condition to delivery to the other parties thereto being consummation of Closing.

(g) REA. The REA shall have been fully executed by Seller, and Seller shall have unconditionally delivered its counterpart of the REA into escrow with Escrow Agent, with the only condition to delivery to the other parties thereto being consummation of Closing.

(h) 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) waive any such condition and proceed to Closing without adjustment or abatement of the Purchase Price, or (b) 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.

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. Subject solely to Purchaser's right to update its representation and warranty set forth in **Section 6.6** pursuant to **Article VI**, 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.

(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) Marina Lease. The Marina Lease shall have been fully executed by Marina Lessee and Marina Lessee shall have unconditionally delivered its counterpart of the Marina Lease into escrow with Escrow Agent, with the only conditions to delivery to the City being consummation of Closing.

(d) Master Sublease. The Master Sublease shall have been fully executed by each of the parties thereto and each of the parties thereto shall have unconditionally delivered its counterpart of the Master Sublease into escrow with Escrow Agent, with the only conditions to delivery to the other parties thereto being consummation of Closing.

(e) Recognition Agreement. The Recognition Agreement shall have been fully executed by Marina Lessee and Master Sublessee, and Marina Lessee and Master Sublessee each shall have unconditionally delivered its counterpart of the Recognition Agreement into escrow with Escrow Agent, with the only condition to delivery to Seller being consummation of Closing.

(f) REA. The REA shall have been fully executed by each of the parties thereto other than Seller, and each of the parties thereto other than Seller shall have unconditionally delivered its counterpart of the REA into escrow with Escrow Agent, with the only condition to delivery to the other parties thereto being consummation of Closing.

(g) Lawsuits and Marina Lawsuits. Purchaser, Existing Marina Lessee, Marina Lessee and/or their respective affiliates shall be proceeding diligently and in good faith to defend such Lawsuit and/or Marina Lawsuit, as applicable, including exhaustion of all appeals of any Marina Lawsuit through the applicable Court of Appeal (as defined in the Development Agreement).

(h) 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, in which case Escrow Agent shall disburse the Deposit to Seller. If the parties disagree as to whether Purchaser, Existing Marina Lessee, Marina Lessee and/or their respective affiliates are proceeding diligently and in good faith to defend such Lawsuit and/or Marina Lawsuit, as applicable, including exhaustion of all appeals, such dispute shall be resolved by expedited arbitration in accordance with Article XIV hereof. 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).

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 15, 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, incorporating the restrictions and limitations set forth in

Sections 4.1(a)(v) and 4.1(b) of the Development Agreement, 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 (or Seller shall instruct Escrow Agent to release from escrow Seller’s and RDA’s previously executed counterparts delivered into escrow with Escrow Agent).

(e) Recognition Agreement. Seller shall execute and deliver two counterparts of the Recognition Agreement (or Seller shall instruct Escrow Agent to release from escrow Seller’s previously executed counterparts delivered into escrow with Escrow Agent).

(f) REA. Seller shall execute and deliver two counterparts of the REA (or Seller shall instruct Escrow Agent to release from escrow Seller’s previously executed counterparts delivered into escrow with Escrow Agent).

(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 Master Sublessee to execute and deliver two counterparts of the REA (or Purchaser shall instruct and shall cause Master Sublessee to instruct Escrow Agent to release from escrow Purchaser’s and Master Sublessee’s previously executed counterparts delivered into escrow with Escrow Agent).

(e) Master Sublease. Purchaser shall cause the Master Sublessee to execute and deliver two counterparts of the Master Sublease (or Purchaser shall cause Master Sublessee to instruct Escrow Agent to release from escrow Master Sublessee's previously executed counterparts delivered into escrow with Escrow Agent).

(f) Recognition Agreement. Purchaser shall cause Master Sublessee to execute and deliver two counterparts of the Recognition Agreement (or Purchaser shall cause Master Sublessee to instruct Escrow Agent to release from escrow Master Sublessee's previously executed counterparts delivered into escrow with Escrow Agent).

(g) 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.

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

(i) 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; provided, however, that Purchaser's obligation to pay such costs and expenses of Seller arising after the parties finalize the form of this Agreement shall not exceed \$50,000, in the aggregate; provided, however, in the event Purchaser thereafter requests any revisions or amendments to this Agreement, the Development Agreement, the REA, the Marina Lease, the Recognition Agreement or any other documents referenced herein that are not expressly contemplated by and referenced in this Agreement or such other documents, Purchaser shall be responsible for all of Seller's attorneys' and advisors' reasonable fees, charges and disbursements incurred in connection therewith notwithstanding the foregoing cap. 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, the REA and the City Mortgage, each of which shall be recorded by the Escrow Agent promptly after Closing, (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, PLUS, IF APPLICABLE, THE ADDITIONAL AT RISK REQUIRED DEPOSIT (IN EACH CASE EXCLUSIVE OF ANY INTEREST 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 ANY INTEREST EARNED THEREON), AND, IF APPLICABLE, PURCHASER SHALL DELIVER THE ADDITIONAL AT RISK REQUIRED 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 ANY AND ALL INTEREST EARNED ON THE DEPOSIT. THE PARTIES HEREBY AGREE THAT THE AMOUNT OF THE DEPOSIT ACTUALLY PAID, PLUS, IF APPLICABLE, THE ADDITIONAL AT RISK REQUIRED DEPOSIT, 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.

12.3 Notwithstanding anything to the contrary set forth in this Agreement, Sections 12.1 and 12. 2 of this Agreement shall not be deemed to modify Section 15.16 of this Agreement.

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
Dispute Resolution

14.1 Any dispute arising under **Section 9.2** of this Agreement with respect to whether Purchaser, Marina Lessee, Existing Marina Lessee and/or their respective affiliates are proceeding diligently and in good faith to defend a Lawsuit and/or Marina Lawsuit, as applicable, including the exhaustion of all appeals (“**Dispute**”) will first be submitted, by written notice (“**Notice of Dispute**”), to a designated representative of Seller and a designated representative Purchaser who will meet at Seller’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 receipt of the Notice of Dispute, then Purchaser, as its sole remedy, may submit such matter to JAMS Miami Center for resolution on an expedited basis without any pre-hearing discovery before an arbitrator (the “**Neutral**”).

14.2 If Purchaser elects to proceed with an Arbitrator in accordance with **Section 14.1** above the determination will be made by (a) an expert selected jointly by Seller and Purchaser from the panel of Neutrals at Jams Miami Center, or (b) if Seller and Purchaser fail to agree upon a Neutral, by an expert selected by Seller from the panel of Neutrals at Jams Miami Center, a Neutral selected by Purchaser from the panel of Neutrals at Jams Miami Center and a third expert appointed by the Neutrals selected by the parties. Any Arbitrator or expert panelist hereunder will be a certified mediator with at least ten (10) years of professional experience litigating commercial contract disputes. 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 JAMS Expedited Arbitration Procedures (as amended hereby).

14.3 The matter submitted to the Arbitrator will be conclusively determined within thirty (30) days of the appointment of the last Arbitrator by (i) the decision of the single mutually agreed Neutral, (ii) the decision of any two of the three selected Neutrals, if two are able to agree, (iii) the decision of the third expert, if no two of the three experts are able to agree within such period, or (iii) agreement between the parties prior to and independently of the decision of the Arbitrator

14.4 The Arbitrator will determine that Purchaser, Marina Lessee, Existing Marina Lessee and/or their respective affiliates either did proceed diligently and in good faith to defend a Lawsuit and/or Marina Lawsuit, as applicable, including the exhaustion of all appeals, or did not proceed diligently and in good faith to defend a Lawsuit and/or Marina Lawsuit, as applicable, including the exhaustion of all appeals. 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; otherwise, 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 XV
Miscellaneous

15.1 **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.

15.2 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.

15.3 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.

15.4 Survival of Representations and Warranties.

(a) Except as expressly set forth in this Agreement, all of Seller's and Purchaser's respective representations, warranties and covenants shall merge with and into the Deed.

(b) Intentionally Deleted.

15.5 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.

15.6 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, the Interest Commencement Date and the final payment of the Purchase Price may be tolled up to forty two (42) months in connection with Lawsuits and Marina Lawsuits provided the same are being diligently pursued in good faith and shall be reasonably extended for (i) Unavoidable Delay (in accordance with the Development Agreement); and/or (ii) Seller Delays.

15.7 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.

15.8 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. No amendment to Sections 2.2(b) or (d) or Article XIII shall be binding against Escrow Agent unless in writing and signed by Escrow Agent. 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 the REA and PM Loan Documents with such changes, alterations and corrections as may be approved by the City Manager and the City Attorney solely to the limited extent as may be necessary to: (i) reasonably facilitate the Closing, provided, however, in no event shall (x) the PM Loan Documents be modified with respect to the amount of the PM Loan or the timing and amounts of the principal and interest payments of the PM Loan, including installment payments, interest payment dates and the maturity date or (y) the REA be modified with respect to the Project restrictions set forth therein, which restrictions shall conform in all respects to the Project restrictions set forth in Sections 4.1(a) and (b) of the Development Agreement; and (ii) conform the initial legal description of the Residential Parcel to the updated and actual legal description thereof following receipt of all Governmental Approvals and following completion of construction of the Project in accordance with the Development Agreement. All other amendments to this Agreement and the PM Loan Documents must be approved by majority vote of the City Commission, subject to the requirements of applicable law.

15.9 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.

15.10 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.

15.11 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.

15.12 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.

15.13 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:

Marina Park Residential, LLC
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.

15.14 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.

15.15 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, in connection with any Transfer that is a Permitted Transfer. Additionally, 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.

15.16 Attorney's Fees. If litigation or arbitration 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. This Section shall survive Closing and any termination of this Agreement.

15.17 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

MARINA PARK RESIDENTIAL, 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

A maximum of 0.3 acres of the following described land to consist of the to-be-designed lobby and ancillary areas of the residential portion of the Project: 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 air space above such Lots to the extent required for the 275,000 square foot residential improvements to be constructed therein.

The proposed design of the commercial and residential portion of the Project will evolve through the design development process and accordingly, the initial legal description of the Residential Parcel will be preliminary in nature and will be attached to this Agreement by amendment prior to Closing. The initial legal description will be consistent with the limitations contained herein and, in accordance with the Development Agreement, shall be sufficient to accommodate the design development for the residential portion of the Project and will thereafter be revised to conform to the updated and actual legal description thereof following receipt of all Governmental Approvals and following completion of the Project in accordance with the Development Agreement.

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, **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.

“**Arbitrator**” has the meaning set forth in **Section 14.1(a)**.

“**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.

“**Additional At Risk Required Deposit**” means Two Million and No/100 Dollars (\$2,000,000.00) if Purchaser defaults under this Agreement on or after the date the Additional Deposit is due.

“**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.

“**City Parties**” means the officers, employees, agents and instrumentalities 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)**.

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

“**Construction Commencement Conditions**” has the meaning set forth in the Development Agreement.

“**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, on the one hand, and Purchaser and Master Sublessee, collectively, jointly and severally, as “Developer” on the other hand, and having an effective date, subject to Section 1.1 hereof, as of the Effective Date.

“Dispute” has the meaning set forth in **Section 14.1(a)**.

“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 Recognition Agreements” means that certain Non-Disturbance and Attornment Agreement and Consent to Assignment by and between the City and Monty’s Sunset LLC recorded in Official Records Book 27841, Page 1529, of the public records of Miami-Dade County, Florida and to the extent in effect, a non-disturbance agreement between the City and Texas De Brazil (South Beach) Corporation.

“Existing Subleases” means subleases between Existing Marina Lessee or any of its predecessors in interest under the Existing Marina Lease with Existing Sublessees.

“Existing Sublessees” means the Persons listed on **Schedule G** attached hereto.

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

"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 MB Marina Park, LLC, a Delaware limited liability company, 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 Marina Park Commercial, LLC, a Delaware limited liability company, 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 15.13**.

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

"Permitted Transfer" has the meaning set forth in the Development Agreement.

"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 the form attached hereto as **Schedule F** and made a part hereof.

“**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 **Sections 2.2(c)(iii) or 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 January 21, 1986 between the Board of Trustees, as lessor, and the City and the RDA, as lessee, and recorded in Official Records Book 16509, Page 3694 of the Public Records of Miami-Dade County, Florida, as modified by 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**.

“**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.

“**Unavoidable Delay**” has the meaning set forth in the Development Agreement

SCHEDULE C

FORM OF REA

(attached hereto)

This instrument prepared by, or under the supervision of (and after recording, return to):

Gary A. Saul, Esq.
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, FL 33131

(Reserved for Clerk of Court)

**DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS**

FOR

THREE HUNDRED ALTON

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**DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR
THREE HUNDRED ALTON**

THIS DECLARATION OF COVENANTS RESTRICTIONS AND EASEMENTS is made as of the ____ day of _____, 20__, by Marina Park Residential, LLC., a Delaware limited liability company, which declares hereby that "Three Hundred Alton" (also known as "The Properties" described in subsection 1.1(oo) of this Declaration) are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Allocated Interests" shall have the meaning given in Section 11.7.
- (b) "Assessments" shall mean and refer to the various forms of payment to Shared Facilities Manager which are required to be made by Owners, as more particularly described in Article 15 of this Declaration.
- (c) "Benefitted Element" shall mean and refer to, with respect to each of the Element Exclusive Facilities, the Element that is the sole and exclusive beneficiary of the use and enjoyment thereof.
- (d) "Burdened Element" shall mean and refer to, with respect to each of the Element Exclusive Facilities, the Element(s) in which such Element Exclusive Facilities are located (and therefore burdened thereby).
- (e) "City" shall mean and refer to the City of Miami Beach, Florida. Any and all references herein to the City shall refer to the City, solely in its capacity as the governing municipality acting in its official capacity, and shall not be deemed to refer to the City as an Owner of any Element and/or other portion of The Properties to the extent that it may in fact be such an owner.
- (f) "Commercial Element" shall have the meaning given in subsection 1.1(q).
- (g) "Commercial Element Owner" shall mean the Owner from time to time of the Commercial Element.
- (h) "Commercial Ground Lease" shall mean and refer to that certain Ground Lease Agreement between MB Marina Park, LLC, a Delaware limited liability company, and The City of Miami Beach, Florida, a Florida municipal corporation, adopted pursuant to City Commission Resolution No. 2020-____ and recorded in Official Records Book _____, Page _____ of the Public Records of the County, as amended, modified, renewed or restated from time to time.

- (i) "Commercial Sublease" shall mean and refer to that certain _____, as amended, modified, renewed or restated from time to time.
- (j) "Common EVCS" shall have the meaning given to it in Section 6.10 below.
- (k) "Construction Practices" shall have the meaning given in Section 5.3.
- (l) "County" shall mean and refer to Miami-Dade County, Florida.
- (m) "Declarant" shall mean and refer to Marina Park Residential, LLC., a Delaware limited liability company, its successors and such of its assigns as to which the rights of Declarant hereunder are specifically assigned in writing. Each Declarant may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of The Properties, including any Element. In the event of any partial assignment, the assignee shall not be deemed Declarant, but may exercise such rights of Declarant as are specifically assigned to it (with all other Declarant rights and all Declarant obligations remaining with the assignor, unless expressly provided to the contrary). Any such assignment may be made on an exclusive or nonexclusive basis, with the allocation of Declarant's rights and obligations to be as set forth in the instrument of assignment (failing which Declarant and each such assignee shall be jointly and severally obligated for all obligations of Declarant, and shall jointly share all shared rights of Declarant). Notwithstanding any assignment of the Declarant's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Declarant unless, and only to the extent that, it expressly agrees to do so in writing. Notwithstanding anything herein contained to the contrary: (i) if Declarant is the trustee of a trust, any and all references to property owned by Declarant, shall, be deemed to refer to property owned either directly by the trustee or by any beneficiary of the trust, (ii) if there is one or more Declarants, any and all references to property owned by Declarant, shall, be deemed to refer to property owned by any Declarant, (iii) any and all releases, waivers and/or indemnifications of Declarant set forth in, or arising from, this Declaration, shall be deemed to be releases, waivers and/or indemnifications, as applicable, of any and all parties holding Declarant rights, and if any Declarant is the trustee of a trust, the beneficial owners of the trust, and any direct or indirect beneficial owners, partners, shareholders, members, managers, of any Declarant or beneficial owners and its or their successors and assigns.

- (n) "Declarant's Mortgagee" shall mean and refer to any lender and/or mortgagee having a mortgage upon any portion of The Properties at the time of the recordation of this Declaration, for as long as the lender holds a mortgage or mortgages on any Element, Unit or other portion of The Properties owned by Declarant, and thereafter such mortgagee or mortgagees as Declarant shall, from time to time, designate by notice to Shared Facilities Manager as being "Declarant's Mortgagee". For the avoidance of doubt, there may be more than one Declarant's Mortgagee at any time.
- (o) "Declaration" shall mean this instrument and all exhibits attached hereto, as same may be amended or supplemented from time to time.
- (p) "Default Rate" shall mean the lesser of (i) eighteen percent (18%) per annum, (ii) the then current rate of interest published from time to time by Citibank (or any successor to it, or if none, such financial institution as Shared Facilities Manager may designate) as its "prime" or "bank" (or comparable) lending rate, plus ten percent (10%) per annum, or (iii) the maximum rate allowed by applicable Legal Requirements.
- (q) "Development Agreement" shall mean and refer to that certain Development Agreement 2020-____ for the Development of the Marina Park Project between _____ and the City of Miami Beach, a Florida municipal corporation, recorded in Official Records Book _____, Page _____ of the Public Records of the County, as amended, modified or restated from time to time.
- (r) "Development Rights" shall mean all development rights and/or building rights appurtenant to or benefitting The Properties, including without limitation any and all governmental or quasi-governmental authorizations, approvals, orders, entitlements, variances, waivers, allocations, permits, licenses and agreements of any kind or nature relating to the development of The Properties or any portion thereof and/or the construction of any improvements thereon; water, sanitary sewer and storm water rights, capacity and connections (and/or their equivalents); impact fee credits; available FAR; and/or other rights of any kind or nature relating to the development of The Properties or any portion thereof and/or the construction of any improvements thereon.
- (s) "Electric Vehicle Charging Station" or "EVCS" means a station that is designed in compliance with applicable Federal, State and local building codes and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station includes any related equipment needed to facilitate charging plug-in electric vehicles.

- (t) "Element" shall mean and refer to a portion of The Properties which is designated as such in this Declaration or in a Supplemental Declaration executed and recorded by Shared Facilities Manager (and joined into by the Owner of such parcel, if different from Shared Facilities Manager). In the event that any Element is submitted to the condominium or other collective form of ownership, it shall nevertheless be deemed a single Element hereunder, as more particularly described in Section 8.7 of this Declaration. It is contemplated (but without imposing any obligation) that The Properties shall ultimately contain the following Elements (but not all of the following need in fact be added to The Properties and the listing set forth below shall not limit Shared Facilities Manager's right to create additional Elements, eliminate any of the listed Elements or change any Elements):
- (i) the "Commercial Element" which is legally described and/or depicted on Exhibit "B" attached hereto;
 - (ii) the "Residential Element" which is legally described and/or depicted on Exhibit "B" attached hereto;
 - (iii) the "Shared Facilities Element" which is legally described and/or depicted on Exhibit "B" attached hereto, and includes without limitation, all of the airspace located outside the exterior of the Structures.

The Properties may be supplemented to add additional Elements, to redefine Element boundaries (to comport to as-built Structures or otherwise), to subdivide and/or combine existing Elements and/or to supplement the Shared Facilities Element or any other Element. If so, the legal descriptions or graphic depictions of the affected Elements will be set forth in the Supplemental Declaration submitting or modifying same. Notwithstanding anything herein contained to the contrary, the name of each Element is assigned only for convenience of reference, and is not intended, nor shall it be deemed to limit or otherwise restrict the permitted uses thereof.

- (u) "Element Exclusive Facilities" shall mean and refer to those areas and/or facilities within one or more Elements of The Properties (referred to herein as the "Burdened Element") that are intended for the benefit and exclusive use (subject to the rights, if any, of any Governmental Authority, Shared Facilities Manager and the public) of the Owner of another Element and/or the Units in such other Element (referred to herein as the "Benefitted Element") to the exclusion of the Owners of the other Elements. The Element Exclusive Facilities shall be subject to such regulation and restrictions as may be imposed from time

to time in accordance with the provisions of this Declaration. The Element Exclusive Facilities shall include, as applicable and without limitation, the following areas and/or facilities, as and to the extent same exist from time to time and as modified, supplemented or replaced from time to time:

- (i) all utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems serving one Element exclusively (but not any other Element), including without limitation, all wires, conduits, pipes, ducts, transformers, cables, generators and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services;
- (ii) all heating, ventilating and air conditioning systems serving one Element exclusively (but not any other Element), including, without limitation, compressors, air handlers, ducts, chillers, cooling towers and other apparatus used in the delivery of HVAC services;
- (iii) all lobbies, elevator lobby areas and mail rooms serving one Element exclusively (but not any other Element);
- (iv) all elevator pits, elevator shafts, elevator cabs, elevator cables, and/or machinery, systems and/or equipment used in the operation of the elevators serving one Element exclusively (but not any other Element);
- (v) all trash rooms and any and all trash collection and/or disposal systems serving one Element exclusively (but not any other Element), provided that any trash collection areas which terminate in the loading bay areas are subject to the control of and any restrictions imposed by Shared Facilities Manager;
- (vi) all mechanical rooms serving one Element exclusively (but not any other Element), including without limitation fire pump rooms, fire command rooms, water pump rooms, electrical rooms, generator rooms, fuel tank rooms, FPL vault rooms and pool equipment rooms;
- (vii) all grease traps serving one Element exclusively (but not any other Element);
- (viii) all monument, interior, exterior and/or other signage identifying an Element exclusively (but not any other Element) that is not part of the project-wide directional signage system and/or otherwise included in Shared Facilities; and

(ix) **[placeholder for additional Element Exclusive Facilities].**

For the avoidance of doubt, the Element Exclusive Facilities shall not include any areas and/or facilities of The Properties included in the Shared Facilities under this Declaration. However, although the Shared Facilities generally serve more than one Element, the Shared Facilities may include certain areas and/or facilities that serve one Element exclusively. This may be the case due to a variety of reasons, including, *inter alia*, the significance of the area and/or facility in question to the integrated nature of The Properties from a safety or aesthetic perspective and/or economic or other efficiencies that may be achieved by including such areas in the Shared Facilities. Accordingly, if and to the extent any areas and/or facilities of The Properties that serve only one Element are included in the Shared Facilities, such areas and/or facilities shall not be part of (and shall be excluded from) the Element Exclusive Facilities irrespective of whether same serve one Element exclusively. The Element Exclusive Facilities may be graphically depicted on the Project Facilities Plans.

- (v) "Element Specific Declaration" shall mean the declaration of covenants, conditions, easements and/or restrictions and all other documents necessary or required to submit portions of The Properties to the condominium or cooperative form of ownership or other collective ownership structure, as amended and supplemented from time to time. To the extent that any portion of The Properties is subject to more than one Element Specific Declaration, the Element Specific Declaration encumbering the greatest portion of The Properties shall be deemed the Element Specific Declaration hereunder, except as otherwise expressly provided in such declarations. This Declaration is not and shall not be deemed an Element Specific Declaration.
- (w) "Element Specific Manager" shall mean any entity created or to be created to administer specific portions of The Properties and common areas or common elements lying within such portions pursuant to an Element Specific Declaration. In instances where the Element Specific Declaration references an association to govern the common elements and/or common areas of the Submitted Element governed by the Element Specific Declaration and does not have any other entity performing similar functions, then the Element Specific Manager shall be the condominium or property owners' association named in the applicable Element Specific Declaration. To the extent that the Element Specific Declaration does not establish an association to govern the common elements and/or common areas of the Submitted Element governed by the Element Specific Declaration, or establishes an association and another entity performing similar functions, then in such instances, the Element Specific Manager shall be deemed to be the entity designated to perform such functions (whether or not

in fact an association) and not the named association, if any. In the event of any doubt as to the Element Specific Manager for a particular Element or under a particular Element Specific Declaration, the Shared Facilities Manager shall have the authority to make the determination, and the opinion of the Shared Facilities Manager shall be binding and conclusive.

- (x) "Facilities Records" shall have the meaning given in Section 15.9.
- (y) "Governmental Authority" shall mean the United States of America, the State of Florida, the County, the City, any political subdivision thereof and any agency, department, commission, board, bureau, official or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, and any successor to any of the foregoing, having jurisdiction over The Properties or any portion thereof.
- (z) "Insured Property" shall have the meaning given in Section 11.3.
- (aa) "Legal Requirements" shall mean any law (including without limitation any laws relating to hazardous materials or substances), enactment, statute, code, ordinance, administrative order, charter, comprehensive plan, tariff, resolution, rule, regulation (including land development regulations), guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction, approval or requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued.
- (bb) "Limited Shared Facility" or "Limited Shared Facilities" shall mean and refer to such portions of the Shared Facilities which are intended for the exclusive use (subject to the rights, if any, of the County, the City, any other applicable governmental or quasi-governmental authority, the Shared Facilities Manager and the public) of the Owners of specific Units and/or Elements, to the exclusion of others. Unless otherwise provided specifically to the contrary, reference to the Shared Facilities shall include the Limited Shared Facilities.
- (cc) "Long-Term Lease" shall mean any lease, sublease and/or other occupancy agreement of an entire Element having an initial term of in excess of forty five (45) years. The Commercial Ground Lease and the Commercial Sublease are recognized and agreed to each be a Long-Term Lease.
- (dd) "Losses" shall mean all damages, construction, mechanics or other liens, liabilities, losses, demands, actions, causes of action, claims, costs and expenses (including reasonable attorneys' fees, including all fees and costs in arbitration, at trial and on appeal or as a result of a bankruptcy).

- (ee) "Master Life Safety Systems" mean and refer to any and all of the following: emergency lighting, emergency generators, fire pump equipment and rooms, monitoring stations, audio and visual signals, safety systems, sprinklers and smoke detection systems, if any, and any housing areas of same, which are now or hereafter installed in any improvements constructed upon The Properties, and which serve more than one Element or an Element and/or the Shared Facilities, or any portion of same. All such Master Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed part of the Shared Facilities. Without limiting the generality of the foregoing, when the context shall so allow, the Master Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all Shared Stairways.
- (ff) "Mechanical Rooms" shall mean and refer to, collectively, the machinery and equipment rooms now or hereafter located within The Properties, including but not limited to the components and facilities and equipment described in subsection 1.1(u). This definition of Mechanical Rooms includes all equipment, components, machinery, mechanical systems and related items located therein.
- (gg) "Mortgage" shall have the meaning given to it in subsection 10.1(a).
- (hh) "Owner" shall, subject to the provisions of Sections 8.7, 8.8 and 8.9, mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Element situated upon or within The Properties. For the purposes of this Declaration, with respect to any Element/Structure governed by an Element Specific Declaration, an "Owner" shall also mean the Element Specific Manager for such Element/Structure as more particularly described in Section 8.7 and 8.8 of this Declaration. As to any benefits and/or rights afforded Owners under this Declaration, whether as to use of Shared Facilities, easements granted hereunder or otherwise, or in any other instance where the context so requires, Owner shall also be deemed to mean and refer to each Unit Owner. Further, in any instances in the Declaration where the Owner makes, waives, releases and/or agrees to indemnify any other party, said waivers, releases, agreements and indemnification shall be deemed to be made by both the Owner and all applicable Unit Owners.
- (ii) "Parking Area" shall mean those portions of the Shared Facilities consisting of parking spaces, parking driveways, ramps and other infrastructure serving or facilitating parking within the parking spaces.
- (jj) "Permitted User" shall mean any person who occupies an Element or a Unit or any part thereof with the permission of the Element Owner or Unit Owner,

including, without limitation, Tenants (as hereinafter defined), easement beneficiaries, members of such Element Owner's, Unit Owner's or Tenant's family and his, her or its guests, licensees, employees, customers, business invitees and personal invitees. The rights of Permitted Users are limited in scope by the terms and conditions of this Declaration, depending on the applicable Element, Shared Facilities and Element Exclusive Facilities involved.

- (kk) "Project Encumbrances" shall mean and refer to any covenants, conditions, restrictions, easements, agreements, instruments and other encumbrances that now or hereafter encumber The Properties (or more than one Element thereof), the ongoing requirements of any entitlements or development approvals for Three Hundred Alton and any other instruments entered into in connection with obtaining such entitlements and development approvals, including, without limitation, the following: _____
_____..
- (ll) "Project Facilities" means, collectively, the Element Exclusive Facilities and the Shared Facilities.
- (mm) "Project Facilities Plans" shall mean, collectively, the full size plans entitled [*Three Hundred Alton – Facilities Plans*], prepared by [_____], that graphically depict the Element Exclusive Facilities and Shared Facilities, which plans are maintained at the office of Shared Facilities Manager located at _____ (or another location designated by Shared Facilities Manager), as same may be revised, modified, supplemented and replaced from time to time.
- (nn) "Project Standard" shall mean the standard required to maintain and operate The Properties (and all Elements therein) in a condition and a quality level no less than that which existed at the time that the initial design and construction of the Structures on the Elements was completed (ordinary wear and tear excepted) and the initial landscaping and signage was installed.
- (oo) "The Properties" or "Three Hundred Alton" shall mean and refer to all properties described in Exhibit "A" attached hereto and made a part hereof, and all additions thereto, now or hereafter made subject to this Declaration, except such as are withdrawn from the provisions hereof in accordance with the procedures set forth in this Declaration.
- (pp) "Residential Element" shall have the meaning given in subsection 1.1(q).

- (qq) "Residential Element Owner" shall mean the Owner from time to time of the Residential Element.
- (rr) "Shared Facilities" shall mean and refer to the portions of The Properties (or adjacent to or in the vicinity thereof), whether by purpose, nature, intent or function, that afford benefits or impose burdens shared by more than one Element or Owner, as same may be modified, supplemented or replaced from time to time. Given the integration and design of the improvements comprising the Elements and any additional Element as a unified project, and notwithstanding the legal descriptions or graphic depictions contained in any exhibits, or the legal descriptions or graphic depictions of any Elements added hereto or redrawn by Supplemental Declaration, there is a necessity to share and/or unify responsibility for certain components of The Properties. Those shared components shall be identified as the "Shared Facilities", which include, without limitation, the Shared Facilities Element and the following areas and/or facilities (together with a license for reasonable pedestrian access thereto) intended for use by and/or enjoyment of the Element Owners (and their Tenants and other Permitted Users), as modified, supplemented or replaced from time to time:
- (i) all sidewalks, pedestrian paths and bike paths, and any courtyards serving more than one Element, together with all improvements related thereto;
 - (ii) any gateway or other entry feature or landmark at any entrance to The Properties (as distinguished from any entry feature for any particular Element or Elements, but not all Elements) or included in the Shared Facilities Element;
 - (iii) any landscaping and streetscaping around and/or serving any exterior portion of The Properties, including without limitation exterior landscaping and streetscaping on any Element, plantings, flowers, planters, fountains, public water sources, artwork and sculptures, irrigation systems, rain gardens and similar water conservation installations, benches and public seating, but expressly excluding any plants, shrubbery or other landscaping materials on balconies, terraces or patios included within an Element;
 - (iv) any improvements to the rights-of-way adjacent to or within the vicinity of The Properties, including without limitation pavers, traffic, bike and pedestrian control devices and signage, pavement markings and signage, noise reduction installations, driveways and drive aisles,

- lighting and landscaping in excess of the standard improvements customarily installed by the applicable governmental authority (e.g., the City, County or Florida Department of Transportation) with jurisdiction over such rights-of-way;
- (v) all exterior project lighting and all street or exterior lighting fixtures, installations equipment serving or part of the Shared Facilities and/or which are part of an exterior lighting scheme applicable to more than one Element;
 - (vi) any project-wide directional signage system and all project identification signage, including without limitation monument signs, exterior façade and entranceway "eyebrow" signage and interior signage;
 - (vii) all Shared Stairways and above ground walkways connecting more than one Element;
 - (viii) all drives, paths and other areas serving all Elements or included in the Shared Facilities Element;
 - (ix) all structural components of the improvements and air space outside the exterior of the Structures, including, without limitation, all foundations, pilings, slabs and structural columns, post tension cables and/or rods contained in any improvements, exterior walls, exterior glass surfaces, cantilever structures, and all finishes and balconies, terraces and/or facades attached or affixed to any Structures. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO POST TENSION CABLES AND/OR RODS CONTAINED IN ANY IMPROVEMENTS CONSTRUCTED UPON THE PROPERTIES SHALL BE CONSIDERED A PART OF AN ELEMENT (OTHER THAN THE SHARED FACILITIES ELEMENT). AS SUCH CABLES AND/OR RODS ARE ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE IMPROVEMENTS, ALL POST TENSION CABLES AND/OR RODS SHALL BE DEEMED PART OF THE SHARED FACILITIES OF THE SHARED FACILITIES ELEMENT AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE SHARED FACILITIES ELEMENT OWNER;;**
 - (x) the roofs and all roof trusses, roof support elements and roofing insulation;
 - (xi) the Master Life Safety Systems;

- (xii) all drainage, utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems serving the Shared Facilities Element or more than one Element, including, without limitation, all water and sanitary sewer system facilities, and all wires, conduits, pipes, ducts, transformers, cables and other apparatus used in any drainage system and the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services, and all Mechanical Rooms in which any of the foregoing are located;
- (xiii) all heating, ventilating and air conditioning systems serving the Shared Facilities Element or more than one Element, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services;
- (xiv) all bicycle storage areas and mail rooms serving more than one Element;
- (xv) all elevator lobbies, elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators serving more than one Element;
- (xvi) all trash rooms and any and all trash collection and/or disposal systems serving the Shared Facilities Element or more than one Element;
- (xvii) all Mechanical Rooms included in or serving the Shared Facilities Element or more than one Element, including without limitation Fire Pump Rooms, Fire Command Rooms, Water Pump Rooms, Electrical Rooms, Generator Rooms, Fuel Tank Rooms, and FPL Vault Rooms;
- (xviii) any management, security, concierge or other similar areas and offices, wherever located, used by personnel providing services to more than one Element;
- (xix) all loading bays, docks and other areas; and
- (xx) ***[placeholder for additional Shared Facilities]***

All Shared Facilities shall be subject to such regulation and restrictions as may be imposed from time to time by Shared Facilities Manager in accordance with the provisions of this Declaration. For the avoidance of doubt, the Shared Facilities (1) include all areas and/or facilities comprising the Shared Facilities Element, except for any areas or facilities, which, although located in or comprising a part of the Shared Facilities Element, are specifically identified as

Element Exclusive Facilities on the Project Facilities Plans and/or pursuant to subsection 1.1(o); and (2) include all of the airspace located outside the exterior of the Structures (irrespective of whether such airspace is part of an Element). The Shared Facilities may be graphically depicted on the Project Facilities Plans.

- (ss) "Shared Facilities Costs" shall have the meaning given in Section 15.3.
- (tt) "Shared Facilities Element" shall have the meaning given in subsection 1.1(s), and shall include the land underlying the Shared Facilities Element.
- (uu) "Shared Facilities Element Owner" shall mean the owner from time to time of the Shared Facilities Element.
- (vv) "Shared Facilities Manager" means the Shared Facilities Element Owner or the person or entity designated by the Shared Facilities Element Owner from time to time to manage the operation of the Shared Facilities and to perform the administrative responsibilities of Shared Facilities Manager under this Declaration. For so long as the "Commercial Sublease" remains in effect, the subtenant thereunder is hereby designated as the initial Shared Facilities Manager under this Declaration. Notwithstanding anything herein contained to the contrary, any and all releases, waivers and/or indemnifications of Shared Facilities Manager set forth in, or arising from, this Declaration, shall be deemed to be releases, waivers and/or indemnifications, as applicable, of Shared Facilities Manager and Shared Facilities Element Owner, and its or their successors and assigns.
- (ww) "Shared Stairways" mean any flight of steps, fire corridors, elevators and/or escalators which are at some point located in, or directly accessible from, more than one Element and/or required under Legal Requirements for life safety purposes.
- (xx) "Structure" shall mean and refer to the structure or structures constructed on an Element and all appurtenant improvements. A "Structure" shall be deemed a single Structure hereunder even though divided into separate condominium, cooperative or other collective ownership parcels.
- (yy) "Submitted Element" shall mean any portion of The Properties now or hereafter submitted to the condominium or cooperative form of ownership or other collective ownership structure pursuant to an Element Specific Declaration.
- (zz) "Successor Corporation" shall have the meaning given in Section 17.8.

- (aaa) "Supplemental Declaration" shall mean and refer to an instrument executed by Shared Facilities Manager as well as any applicable Owner (but only if and to the extent execution by any such applicable Owner is required under this Declaration) and recorded in the Public Records of the County, for the purpose of adding to The Properties, withdrawing any portion(s) thereof from the effect of this Declaration, subdividing any Element, creating an Element, reallocating among Elements, establishing additional types of Project Facilities, designating (or removing the designation of) a portion of The Properties as Project Facilities hereunder, or designating or redesignating any portion of the Project Facilities as a particular type of Project Facilities or a shared component or common area/element of a Submitted Element or for such other purposes as are provided in this Declaration.
- (bbb) "Tax Value Percentage Share" shall have the meaning given in subsection 14.2(b).
- (ccc) "Taxed Elements" shall have the meaning given in Section 14.2.
- (ddd) "Tax" or "Taxes" shall mean all taxes and other governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against The Properties, an Element (excluding Units within any Element), or any part thereof or any interest therein, including, without limitation, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of such real estate taxes or assessments, by virtue of being situated within a business improvement district, or any taxes levied or a charge upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an Owner therein, and all ad valorem taxes and non-ad valorem assessments lawfully assessed upon The Properties or any Element (excluding Units within any Submitted Element).
- (eee) "Tenant" shall mean any person who is legally entitled to the use and enjoyment of all or any portion of a Unit or Element under a lease, rental or tenancy agreement, exchange arrangement, concession agreement, or similar entitlement with or from a Unit Owner or Element Owner. Tenant is included in the definition of Permitted User.
- (fff) "Unit" or "Units" shall mean, with respect to any Submitted Element, the condominium, cooperative or other units, lots or parcels located within such Submitted Element.
- (ggg) "Unit Owner" shall mean the owner of a Unit.

1.2 Interpretation. The provisions of this Declaration shall be interpreted by Shared Facilities Manager. Any such interpretation of Shared Facilities Manager which is rendered in good faith shall be final, binding and conclusive. Notwithstanding any Legal Requirement to the contrary, the provisions of this Declaration shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of The Properties, the preservation of the values of the Elements and Structures and the protection of Declarant's and Shared Facilities Manager's rights, benefits and privileges herein contemplated. As provided elsewhere in this Declaration, Shared Facilities Manager duties and obligations under this Declaration shall be subject in all events to receipt of funds necessary to perform same (through Assessments or as otherwise provided herein) and Shared Facilities Manager shall have no personal obligation to fund any sums needed to perform such duties and obligations.

2. **PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO**

2.1 Legal Description. The initial real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County, and is more particularly described in Exhibit "A" attached hereto and made a part hereof, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Properties".

2.2 Supplements to The Properties. Shared Facilities Manager (joined by the owner, if different than Shared Facilities Manager), may from time to time subject other land under the provisions of this Declaration by Supplemental Declarations, which shall not require the consent of the existing Owners or any mortgagee other than that, if any, of the land intended to be added to The Properties, and thereby add to The Properties and/or to any particular Element (provided the joinder of the applicable Element Owner is obtained). To the extent that such additional real property shall be made a part of The Properties, reference herein to The Properties shall be deemed to be a reference to all of such additional property where such reference is intended to include property other than that legally described in Exhibit "A". Nothing herein, however, shall obligate Shared Facilities Manager to add any real property to the initial portion of The Properties, to develop any such future additional real property under a common scheme, nor to prohibit Declarant from rezoning, replatting, recording a covenant in lieu of unity of title and/or changing plans with respect to such future additional real property. A Supplemental Declaration may vary the terms of this Declaration by addition, deletion or modification so as to reflect any unique characteristics of a particular portion of The Properties identified therein; provided, however, that no such variance shall be directly contrary to the uniform scheme of development of The Properties.

- 2.3 Shared Facilities Manager's Right to Modify Project Facilities. Subject to Section 2.6, Shared Facilities Manager shall have the right (but not the obligation), by Supplemental Declaration executed by Shared Facilities Manager (and joined in by Declarant's Mortgagee) to eliminate or supplement the Project Facilities by removing or adding additional facilities or to designate any additional portions of Three Hundred Alton as Shared Facilities or Element Exclusive Facilities hereunder (or redesignate any portion of same among any types of Project Facilities, whether from among the existing types, or any future type of Project Facilities which Declarant (together with Shared Facilities Manager) may elect to establish). Notwithstanding the designation of the Project Facilities, Shared Facilities Manager shall have the right, from time to time, to expand, alter, relocate and/or eliminate the Project Facilities, or any portion thereof, without requiring the consent or approval of any Owner, any Element Specific Manager or any member/Owner of a Submitted Element (including, without limitation, any and all owners or mortgagees of the Units, if any, established within any Element). In furtherance of the foregoing, but subject to Section 2.6, Shared Facilities Manager also reserves the absolute right at any time, and from time to time, to construct additional facilities upon or adjacent to the Project Facilities and to determine whether same shall be deemed Shared Facilities or Element Exclusive Facilities and/or the type of Shared Facilities (i.e. serving all Elements or specific Elements) or Element Exclusive Facilities (i.e., serving a particular Element exclusively).

Without limiting the generality of the foregoing or the provisions of Section 2.8, but subject to the limitations of Section 2.6 below, Shared Facilities Manager may, from time to time, designate portions of the Shared Facilities as Limited Shared Facilities for the use of some, but not all Element Owners. Any such designation shall be made by Supplemental Declaration executed only by Shared Facilities Manager, without requiring the consent or joinder of any other Owners or mortgagees. The Supplemental Declaration shall designate the portion of the Shared Facilities to be designated as Limited Shared Facilities, the Elements entitled to use of the designated Limited Shared Facilities, the allocation of the costs associated with the maintenance, operation, insurance, repair and replacement of the designated Limited Shared Facilities (which may keep said costs as general Common Expenses to be borne by all Owners, or limiting responsibility for said costs between or among only the Element Owners entitled to use thereof, and if the latter the percentages to be allocated to the applicable Elements). Additionally, as to any Limited Shared Facilities, the Shared Facilities Manager may, from time to time, designate same as general Shared Facilities (for the benefit of all Element Owners) by Supplemental Declaration executed by Shared Facilities Manager and the Owners of the Elements that are relinquishing exclusive use of said Limited Shared Facilities by the designation of same as general Shared Facilities. No mortgagees or other Owners shall be required to join in a Supplemental Declaration designating Limited Shared Facilities as part of the general Shared Facilities.

- 2.4 Shared Facilities Manager's Right to Withdraw Property. Subject to Section 2.6, Shared Facilities Manager reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity (other than Declarant, Declarant's Mortgagee and the Owner(s) of the property being removed if other than Declarant), for the purpose of removing certain portions of The Properties (including, without limitation, Elements, Element Exclusive Facilities and/or Shared Facilities, or portions of any of the foregoing) then owned by Declarant or its affiliates from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Properties desired to be effected by Declarant; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Properties.
- 2.5 Subdivision of Elements. Subject to the provisions hereof, an Element may be subdivided by Supplemental Declaration executed by the Shared Facilities Manager and the Owner and any mortgagee of the subdivided Element, without the consent of any other existing Owners or mortgagees. To the extent that any Element shall be subdivided, reference herein to the Elements shall be deemed to include all of the Elements, including the newly subdivided Elements, unless otherwise indicated in the Supplemental Declaration. All Owners, by acceptance of a deed or other conveyance of their Elements, shall be deemed to have automatically consented to any such subdivision of other Elements, and shall evidence such consent in writing if requested to do so by Shared Facilities Manager or the Owner of the subdivided Element at any time (provided, however, that the refusal to give such written consent shall not obviate the general and automatic effect of this provision). Any Supplemental Declaration effectuating a subdivision of an Element as contemplated herein shall describe with particularity the extent to which each portion of the subdivided Element shall have use rights in and to the Project Facilities (and/or be liable for any costs relating to the Project Facilities). For the avoidance of doubt, the foregoing provision is not intended to apply to the subdivision of an Element through an Element Specific Declaration, which shall be governed by the other provisions of this Declaration applicable to collective ownership structures.
- 2.6 Limitations on Supplements, Modifications and Withdrawal by Shared Facilities Manager. Notwithstanding the provisions of Sections 2.3, 2.4, and 2.5, Shared Facilities Manager shall not remove, alter, relocate, re-designate or subdivide any portion of The Properties or the Project Facilities to the extent that same will result in the denial to any Owner or any Unit Owner of legal pedestrian and/or vehicular access (direct or by easement) to and from the Owner's Element or shall result in the termination of any utility and/or mechanical, electrical, HVAC, plumbing, life safety, monitoring, information and/or other systems located in and/or comprising the Project Facilities and serving said Owner's Element, or shall compromise the structural integrity of the Structure or otherwise impair the easements of support granted herein (without

otherwise providing reasonably equivalent substitutions for same). Furthermore, no such removal, alteration, relocation or re-designation shall (a) encumber or materially affect any portion of The Properties not previously encumbered or affected by such Project Facilities without the consent or joinder of the Owner(s) of such portion and its or their mortgagee(s), or (b) eliminate or materially and adversely affect Element Exclusive Facilities without the consent or joinder of the Owner of the applicable Benefitted Element and its mortgagee(s). The foregoing shall not, however, preclude the temporary cessation of services by the Shared Facilities Manager as reasonably necessary to effect repairs to any Shared Facilities.

- 2.7 Modification of Project Facilities by Shared Facilities Manager. Shared Facilities Manager shall have the right (but not the obligation), by Supplemental Declaration executed by Shared Facilities Manager and Declarant's Mortgagee to supplement the Project Facilities by adding additional facilities or to designate additional portions of Three Hundred Alton as Project Facilities hereunder (or redesignate any portion of same among any types of Project Facilities, whether from among the existing types, or any future type of Project Facilities). Notwithstanding the designation of the Shared Facilities or Element Exclusive Facilities, Shared Facilities Manager shall have the right, from time to time, to expand, alter, relocate and/or eliminate the Project Facilities, or any portion thereof, without requiring the consent or approval of any Owner, any Element Specific Manager or any member/Owner of a Submitted Element (including, without limitation, any and all owners or mortgagees of any Units established within any Element). Shared Facilities Manager shall have the further right to designate portions of the Shared Facilities (including without limitation elevators, trash facilities and loading bay areas) as exclusive to particular Element(s), and/or to designate special use and/or priority rights with respect to any portion of the Shared Facilities to particular Elements, and/or to establish rules and regulations with respect to any portion of the Shared Facilities, including without limitation rules prohibiting Owners or Unit Owners from accessing particular Shared Facilities with pets, limiting the hours of operation and allocating exclusive or non-exclusive use rights to the Elements during particular periods of time and with respect to particular Shared Facilities (including without limitation elevators, trash facilities and loading bay areas). No such alteration, relocation, elimination or re-designation by Shared Facilities Manager hereunder shall deny any Owner legal pedestrian access (direct or via easement) to and from the Owner's Element, nor terminate any utility and/or mechanical, electrical, HVAC, plumbing, life safety, monitoring, information and/or other systems located in and/or comprising the Project Facilities and serving said Owner's Element, nor compromise the structural integrity of the Structure or otherwise impair the easements of support granted herein (without otherwise providing equivalent substitutions for same). Furthermore, no such removal, alteration, relocation or re-designation by Shared Facilities Manager shall (a) encumber or materially affect any portion of The Properties not previously encumbered or affected by such Project Facilities without the consent or joinder of the Owner(s) of

such portion and its or their mortgagee(s), or (b) eliminate or materially and adversely affect Element Exclusive Facilities without the consent or joinder of the Owner of the applicable Benefitted Element and its mortgagee(s). The foregoing shall not, however, preclude the temporary cessation of services as reasonably necessary to effect repairs to any such systems.

2.8 Designation of Project Facilities. Without limiting the generality of Section 1.2, in the event that Shared Facilities Manager determines, in its reasonable judgment, that a particular portion of The Properties is or is not part of the Shared Facilities or a specific type thereof (i.e. serving all or specific Elements), or Element Exclusive Facilities or a specific type thereof (i.e., serving a particular Element exclusively), such determination shall be binding and conclusive. Furthermore, in the event of any doubt, conflict or dispute as to whether any portion of The Properties is or is not part of the Shared Facilities or Element Exclusive Facilities under this Declaration, Shared Facilities Manager may, without the consent of any Element Specific Manager or then existing Owners or mortgagees, record in the public records of the County, a Supplemental Declaration resolving such issue and such Supplemental Declaration executed by Shared Facilities Manager shall be dispositive and binding.

2.9 Legal Description of Elements. The legal descriptions and graphic depictions of the Elements in this Declaration may be adjusted and/or modified, from time to time, whether to conform to any changes reflected after securing City Design Review Board approval, to comport to as-built Structures and to otherwise correct manifest errors. The legal descriptions and graphic depictions of the affected Elements shall be modified by Supplemental Declaration executed by Declarant, Shared Facilities Manager, the Owner of the affected Elements and its or their mortgagees (without the consent of any other Owners or mortgagees). All Owners, by acceptance of a deed or other conveyance of their Elements, shall be deemed to have automatically consented to any such modification of the legal descriptions and graphic depictions for the purposes provided herein, and shall evidence such consent in writing if requested to do so by Declarant, Shared Facilities Manager or the Owner of the affected Elements at any time. Moreover, each Owner shall be and is hereby deemed to have appointed Shared Facilities Manager as its true and lawful attorney-in-fact to execute any instruments or documents on its behalf that may be necessary or desirable to effect any of the foregoing actions, which power of attorney shall be irrevocable and is deemed to be coupled with an interest.

3. GENERAL RIGHTS AND EASEMENTS IN PROJECT FACILITIES

3.1 Rights and Easements in Shared Facilities. Subject to, and in accordance with, all of the other provisions of this Declaration, and except for Limited Shared Facilities as herein specified, each Owner of a portion of The Properties (including, if applicable, any Unit Owner and its and their Permitted Users), shall have limited rights to use, benefit from

and enjoy the Shared Facilities (as same may exist from time to time) for their intended purposes (as reasonably determined by Shared Facilities Manager) in common with all other Owners of a portion of The Properties (and their Permitted Users), but in such manner as may be reasonably regulated by Shared Facilities Manager and in accordance with Legal Requirements. As to any Limited Shared Facilities, each Owner of an Element entitled to use of the Limited Shared Facility (and its and their Permitted Users) shall have limited rights to use, benefit from and enjoy the applicable Limited Shared Facilities (as same may exist from time to time) for their intended purposes (as reasonably determined by Shared Facilities Manager) in common with all other Owners designated to be entitled to use of the applicable Limited Shared Facility (and their Permitted Users), but in such manner as may be reasonably regulated by Shared Facilities Manager and in accordance with Legal Requirements. A non-exclusive easement is hereby reserved (and declared and created) over, under and upon such portions of the Shared Facilities as may be designated, in writing, from time to time by Shared Facilities Manager for the use, benefit and enjoyment of any Shared Facilities that may be constructed thereon from time to time in favor of all Element Owners, including Unit Owners, and their Tenants and Permitted Users.

- 3.2 Rights and Easements in Element Exclusive Facilities. Subject to all of the other provisions of the Declaration, the Owner of each Benefitted Element (including, if applicable, any Unit Owner and its and their Permitted Users), shall have limited rights to use, benefit from and enjoy the Element Exclusive Facilities (as same may exist from time to time) designated for the benefit and exclusive use of such Benefitted Element, for their intended purposes (as determined by Shared Facilities Manager) in common with the Permitted Users of such Owner, but in such manner as may be reasonably regulated by Shared Facilities Manager and in accordance with Legal Requirements. The Owners of the Benefitted Elements shall have easements with respect to the Element Exclusive Facilities serving such Benefitted Elements as more particularly described in Section 4.7.
- 3.3 Rights of Shared Facilities Manager. The rights of use and enjoyment and other easement rights with respect to the Shared Facilities and Element Exclusive Facilities granted herein are hereby made subject to the following:
- (a) The right and duty of Shared Facilities Manager to levy Assessments against each Element for the purpose of maintaining, operating, repairing, insuring, replacing and/or altering the Shared Facilities and any facilities located thereon, as more particularly provided in this Declaration, including without limitation Article 15.
 - (b) The right of Shared Facilities Manager to adopt at any time and from time to time and enforce rules and regulations governing the easements granted herein

and/or the use of the Shared Facilities and/or the Element Exclusive Facilities and all facilities at any time situated thereon, as more particularly provided in Section 3.5. Any rule and/or regulation so adopted by Shared Facilities Manager shall apply until rescinded or modified as if originally set forth at length in this Declaration.

- (c) The right of Shared Facilities Manager to permit such persons as Shared Facilities Manager shall designate to use the Shared Facilities, which may include persons who are not Owners, Tenants or Permitted Users (and may include members of the public generally), except as otherwise expressly provided herein. Additionally, Shared Facilities Manager reserves the right from time to time to (i) limit the right to use certain Shared Facilities and/or Element Exclusive Facilities (such as, by way of example and not limitation, Mechanical Rooms, elevators, trash facilities and loading bay areas) to Owners only, or to Owners and Unit Owners only, and not their Tenants or other Permitted Users, (ii) to designate portions of the Shared Facilities as exclusive to particular Elements, and/or (iii) to designate special use and/or priority rights with respect to any portion of the Shared Facilities to particular Elements.
- (d) The right of Shared Facilities Manager to engage third parties (such as property management companies, consultants and other vendors) to perform and carry out its obligations under this Declaration (or in furtherance thereof) and/or any ongoing obligations under the Project Encumbrances, the cost of which shall be included in Shared Facilities Costs.
- (e) The right of Shared Facilities Manager to have and use, and to require the Element Owners to grant to Shared Facilities Manager, general ("blanket") and specific easements over, under and through the Shared Facilities and/or the Element Exclusive Facilities as necessary or desirable to exercise its rights or perform its obligations under this Declaration.
- (f) The right to supplement and/or withdraw portions of the Project Facilities as provided in Article 2.
- (g) The right to exclude individuals from use of the Project Facilities based upon misconduct of such individuals such as criminal activity, vandalism, loitering, soliciting, violating rules and regulations, loud or violent behavior, or lewd or lascivious conduct.

WITH RESPECT TO THE USE OF THE SHARED FACILITIES AND THE PROPERTIES GENERALLY, ALL PERSONS ARE REFERRED TO ARTICLE 18 HEREOF, WHICH SHALL AT ALL TIMES APPLY THERETO. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY,

SHARED FACILITIES MANAGER SHALL HAVE THE RIGHT TO DELEGATE ANY OF ITS RIGHTS AND OBLIGATIONS HEREUNDER TO ANY PARTY EMPLOYED OR ENGAGED BY SHARED FACILITIES MANAGER.

- 3.4 Easements Appurtenant. The rights and easements provided in this Article 3 shall be appurtenant to and shall pass with the title to each Element benefitted thereby, but shall not be deemed to grant or convey any ownership interest in the Shared Facilities or the Element Exclusive Facilities subject thereto. Notwithstanding the foregoing, any systems, equipment and other facilities located within or comprising the Element Exclusive Facilities, to the extent installed by the Owner of the Benefitted Element served thereby, shall be deemed to be the property of such Benefitted Element Owner as provided in Section 6.7.
- 3.5 Project Facilities Rules and Regulations. Without limiting the generality of Section 3.3, Shared Facilities Manager shall have the right to establish, from time to time, rules and regulations regarding the easements granted herein and/or the use of the Shared Facilities and Element Exclusive Facilities, including, without limitation, rules and regulations (a) allocating exclusive or non-exclusive use rights to the Elements during particular periods of time and/or with respect to particular Shared Facilities, and (b) granting the right to temporarily close or restrict use of Project Facilities, as Shared Facilities Manager may reasonably determine, whether for maintenance purposes, due to an emergency situation or event of *force majeure*, for security reasons or for any other purpose expressly permitted under this Declaration or otherwise; provided, however, that in no event shall any Owner (including, without limitation, Unit Owners and/or their Tenants and/or other Permitted Users) be denied legal access to and from a publicly dedicated street and the applicable Element/Unit.
- 3.6 Use of Roofs. Declarant hereby reserves and grants to Shared Facilities Manager the exclusive right to regulate and approve the use of the roof surfaces and/or the placement or installation of any structures, facilities or improvements on the roof of any Structure within The Properties, including without limitation (a) signs or antennas, dishes or any other receiving, transmitting, monitoring and/or other equipment or facilities of any kind or nature, (b) solar equipment, (c) areas for public or private access, such as rooftop decks or patios, and (d) utilities and enclosures for rooftop utilities, such as HVAC and other mechanical equipment, all as Shared Facilities Manager may deem necessary, desirable or acceptable from time to time, without requiring approval from any Owner, but subject to compliance with all Legal Requirements, the Project Standard and such rules and regulations as may be established from time to time by Shared Facilities Manager. Expenses incurred by Shared Facilities Manager in connection with the use of the roof shall be borne by the Element Owner benefitted by such use, provided that if such use benefits more than one Element, then such expenses shall be included in Shared Facilities Costs or allocated to the Elements so served as

reasonably determined by Shared Facilities Manager. Any consideration paid or received for such rooftop installations for the benefit one or more Elements shall be paid to Shared Facilities Manager and applied to or used to offset expenses associated with such use or Shared Facilities Costs, as reasonably determined by Shared Facilities Manager. If, however, a commercial use is made of any roof that does not benefit any of the Elements, the costs incurred in connection with such commercial use (such as the installation of equipment) shall not be borne by the Element Owners and any consideration paid or received for such rooftop use shall be personal to Shared Facilities Element Owner and shall not be applied to or used to offset Shared Facilities Costs. To the extent services are provided to any Element (or portion thereof) or Unit within an Element from rooftop facilities or equipment (such as antennas or dishes providing telecommunications services), such Element or Unit shall be responsible for the charges therefor, unless same are billed to Shared Facilities Manager, in which case Shared Facilities Manager shall allocate to or among the Elements in the same manner as other expenses incurred by Shared Facilities Manager under this Section.

- 3.7 Signs. Declarant hereby reserves and grants to Shared Facilities Manager the exclusive right to regulate and approve the placement, installation, alteration and replacement of any signage (including without limitation pylons, monument signs, billboards, murals, digital displays and other signage) visible from the exterior of any Element (including on the exterior façade of any Structure) or on the Shared Facilities within The Properties, all as Shared Facilities Manager may deem necessary, desirable or acceptable from time to time, without requiring approval from any Owner. All such signage shall be subject to and comply with Legal Requirements, the Project Standard, signage criteria adopted from time to time by Shared Facilities Manager for Three Hundred Alton, and such rules and regulations as may be established from time to time by Shared Facilities Manager. Any consideration paid or received for such signage located on the exterior façade of any Element shall be the sole property of the applicable Element Owner. No Owner of an Element shall place or install any signage within the interior of or on the exterior of any other Element without the prior written consent of the Shared Facilities Manager, whereupon such signage shall be deemed part of the Element Exclusive Facilities of the Benefitted Element. Once interior or exterior signage has been approved by the Shared Facilities Manager as hereinabove provided, the Owner of the Benefitted Element shall have the right and obligation to access, maintain, repair and replace such signage as part of the Element Exclusive Facilities hereunder; subject, however, to any conditions of such approval. Notwithstanding the foregoing, Shared Facilities Manager shall have the right to install directional signage as part of the project-wide directional signage system and other project identification signage on the exterior façade and/or within the public areas of any individual Element; provided, however, that such signage shall not unreasonably interfere with the operations of the affected Element and shall be consistent with the Project Standard.

3.8 Limited Shared Facilities. Any patios, balconies, terraces, lanais and/or sidewalks adjacent to an Element or a Unit within a Submitted Element shall, subject to the provisions hereof, be a Limited Shared Facility of such Element(s) and/or Unit, so that the Element Owner and/or Unit Owner, as applicable, may, to the extent permitted by law, incorporate and use such areas in connection with, or relating to, the operations from its Element and/or Unit. Such Limited Shared Facilities shall be maintained, repaired and replaced as provided in Article 6 hereof. Notwithstanding the designation of any portion of the Shared Facilities as Limited Shared Facilities, same shall not allow any Owner and/or user of the Limited Shared Facilities to preclude passage through such areas as may be needed from time to time for emergency ingress and egress, for the maintenance, repair, replacement, alteration and/or operation of the Shared Facilities which are most conveniently serviced (in the sole determination of the Shared Facilities Manager) by accessing such areas (and an easement is hereby reserved for such purposes) and/or as may be required by applicable law.

4. **ADDITIONAL EASEMENT RIGHTS AND EASEMENTS**

4.1 Encroachment. If (a) any portion of the Shared Facilities (or improvements constructed thereon) encroaches upon any other portion of an Element or upon any Structure; (b) any portion of an Element (or improvements constructed thereon) encroaches upon the Shared Facilities or any other Element; or (c) any encroachment shall hereafter occur as the result of (i) construction of any improvement; (ii) settling or shifting of any improvement; (iii) any alteration or repair to any improvement after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any improvement or portion of the Shared Facilities, or any Element, then, in any such event, a perpetual easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the Structure causing said encroachment shall stand.

4.2 Easements of Support. Whenever any Structure on any Element or included in the Shared Facilities adjoins any Structure included in any other portion of The Properties, and/or in the event that any Structure is constructed so as to transverse Element lines and/or to be connected in any manner to any Structure on any other Element, then there shall be (and there is hereby declared and created) a perpetual easement of support for such Structure(s), such that each such Structure shall have and be subject to an easement of support and necessity in favor of the other Structure.

4.3 Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Shared Facilities granted and reserved herein, there shall be, and Declarant hereby reserves and grants for itself, Shared Facilities Manager and all Owners of Elements/Structures within The Properties (as well as the Unit Owners), that each and every Owner and Unit Owner (and their respective Permitted Users), and

Shared Facilities Manager and Declarant, shall have a non-exclusive easement appurtenant for (a) pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Shared Facilities as from time to time may be intended and designed for such purpose, and (b) vehicular traffic over all private streets or drives within the Shared Facilities, subject to the parking provisions set forth in Article 16 herein. Notwithstanding the foregoing, Shared Facilities Manager shall have the right to designate certain private streets and drives within the Shared Facilities for the exclusive or primary use by one or more Elements (to the exclusion of other Elements) for traffic circulation, valet parking, drop-off and pick-up and/or other ancillary uses to such Element(s), and to add to or withdraw any of the foregoing from the Shared Facilities, provided that the requirements of Article 2 are not violated.

- 4.4 Project Encumbrances. The easements, rights, restrictions and provisions set forth in the Development Rights and/or Project Encumbrances and any other easements or instruments affecting The Properties (or any portion thereof) recorded in the Public Records of the County, burden and/or benefit (as applicable) The Properties or Element(s) or Shared Facilities (or portion thereof) therein described, subject to the terms and conditions thereof. Without limiting the foregoing, The Properties or Shared Facilities (or applicable portions thereof) are, and shall be, subject to, and encumbered by the Development Rights and/or Project Encumbrances, which, among other things, may grant rights to persons who are not Owners and/or the general public. Accordingly, each Element is governed and burdened by, and subject to, and each Owner is governed and burdened by, and subject to, all of the terms and conditions of the Development Rights and/or Project Encumbrances that encumber or otherwise affect such Element or The Properties or Shared Facilities generally. Each Owner (for itself and its Permitted Users) understands and agrees, by acceptance of a deed or otherwise acquiring title to an Element or Unit, that the rights in and to The Properties and Shared Facilities are junior and subordinate to the rights therein granted under the Development Rights and Project Encumbrances. Pursuant to the Development Rights and/or Project Encumbrances, the Elements may be obligated for the payment of certain ongoing costs and responsibilities. Any and all payments that are the responsibility of Shared Facilities Manager or Shared Facilities Element Owner under the Project Encumbrances pursuant to the terms thereof or this Declaration shall be part of the Assessments charged to Owners by Shared Facilities Manager. Any and all reimbursements, if any, for expenses (other than capital expenditures associated with the initial construction of improvements comprising the Elements) shall be credited against the annual budget. EACH OWNER SHOULD THOROUGHLY REVIEW THE DEVELOPMENT RIGHTS AND PROJECT ENCUMBRANCES TO DETERMINE THE EFFECT SAME WILL HAVE ON THE PROPERTIES AND SHARED FACILITIES.
- 4.5 Recorded Utility Easements. Easements for the installation and maintenance of utilities are reserved as and to the extent shown on recorded plats and/or any recorded

instruments covering the Properties and/or as provided herein. The portion of The Properties covered by an easement and all improvements in such portion shall be maintained continuously by the applicable Element Owner (if within an Element), Shared Facilities Manager or its designee (if part of the Shared Facilities) or the Owner of a Benefitted Element (if part of the Element Exclusive Facilities serving such Benefitted Element), except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company and other utility provider, the applicable Element Owner liable for the maintenance thereof, Declarant and Shared Facilities Manager, and their respective successors, assigns and designees, as applicable, shall have a perpetual easement for the installation and maintenance of water lines, sanitary sewers, storm drains, and electric and telephone lines, cables and conduits, under and through the utility easements as shown on the plats and recorded instruments.

- 4.6 Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Shared Facilities in the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Owners (and their Tenants and other Permitted Users) for emergency ingress and egress over, through and across all Shared Stairways.
- 4.7 Easements for Element Exclusive Facilities. Declarant hereby reserves and grants for itself, Shared Facilities Manager and all Owners of Benefitted Elements within The Properties (and their respective designees), easements for ingress and egress over, under and through The Properties (including all Burdened Elements thereof), to the extent reasonably necessary to access and use the Element Exclusive Facilities for their intended purposes, and to perform the maintenance, repair and replacement obligations with respect to the Element Exclusive Facilities required of the applicable Owner of the Benefitted Element set forth herein. The foregoing reservation and grant shall be deemed to include all easements and rights of access in and to the Burdened Elements and Element Exclusive Facilities reasonably necessary to enable the applicable Owner of the Benefitted Element and its contractors, subcontractors, suppliers, agents and employees to exercise its rights and perform its obligations with respect to the Element Exclusive Facilities under this Declaration, but shall be subject to such rules and regulations as may be established from time to time by Shared Facilities Manager. In exercising the easements contained in this Section, the Benefitted Element Owner shall use reasonable efforts to minimize interference with the other proper uses of the Burdened Element and the operations therefrom and restore any damage caused thereby.
- 4.8 Easements for Shared Facilities Manager. Declarant hereby reserves and grants to Shared Facilities Manager and its designees, perpetual easements over, under and

through The Properties (including all Elements thereof), for the construction and installation of the Shared Facilities and the Element Exclusive Facilities, and/or the operation, repair, replacement, maintenance, alteration and relocation of same, and/or the performance of any rights and/or obligations of Shared Facilities Manager herein described. The foregoing reservation and grant shall be deemed to include all easements and rights of access in and to the Elements, Shared Facilities and Element Exclusive Facilities necessary or desirable to enable Shared Facilities Manager to exercise its rights and perform its obligations under this Declaration. The easements granted herein shall be both "in gross" and personal to Shared Facilities Manager, and also appurtenant to the Shared Facilities Element, and the easements shall also run in favor of the contractors, subcontractors, suppliers, agents, employees and designees of Shared Facilities Manager. The easements reserved and granted to Shared Facilities Manager and the Shared Facilities Element under this Section shall be in addition to the rights and easements reserved and/or granted to Shared Facilities Manager and the Shared Facilities Element under any other provision of this Declaration.

- 4.9 Declarant's Construction, Sales and Leasing Activities. Declarant and its affiliates (and its and their designees, including agents, employees, contractors, subcontractors and suppliers) shall have the right from time to time to enter upon The Properties (including, without limitation, the Elements) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on or comprising a part of the Shared Facilities or elsewhere on The Properties that Declarant and its affiliates or designees elect to effect, and to use, without charge, the Shared Facilities and other portions of The Properties (excluding the interior of the Elements) for sales, leasing, displays and signs or for any other purpose during the period of construction, leasing and sale of any portion thereof or of other portions of adjacent or nearby property. Without limiting the generality of the foregoing, Declarant and its affiliates (and its and their designees) shall have the specific right to maintain upon any portion of The Properties (excluding the interior of the Elements) sales, leasing, administrative, construction or other offices, and to erect, maintain, repair and replace, from time to time, one or more signs on the Shared Facilities for the purposes of advertising the sale or lease of Structures, including without limitation individual Units or other portions thereof. Appropriate exclusive and non-exclusive easements of access and use are hereby expressly reserved unto Declarant and its affiliates, and its and their successors, assigns and designees, including agents, employees, contractors, subcontractors and suppliers, for all of the foregoing purposes, including construction, sales and leasing activities contemplated herein. Any obligation (which shall not be deemed to be created hereby) to complete portions of the Shared Facilities shall, at all times, be subject and subordinate to the foregoing rights and easements and to the above-referenced activities. Accordingly, Declarant shall not be liable for delays in such completion to the extent resulting from the exercise of or need to conclude any of the above-referenced activities prior to such completion.

5. **ALTERATIONS AND IMPROVEMENTS**

- 5.1 **Alterations.** Each Owner may make such alterations within its Element as it may from time to time determine without the consent or approval of the other Owners or Shared Facilities Manager; subject, however, to the remaining provisions of this Article 5 and to all other provisions of this Declaration. Notwithstanding anything herein to the contrary, no addition, alteration or improvement shall be permitted to the extent same is not permitted pursuant to the terms of any Development Rights and any Project Encumbrances or Legal Requirements. The initial construction of Structures on and within an Element shall not be subject to this Article.
- 5.2 **Approval Required.** Without the prior written consent of Shared Facilities Manager, which consent may be granted or withheld in the reasonable discretion of Shared Facilities Manager, no alteration, addition or improvement shall be made by an Owner to any part of its Element that would:
- (a) alter, modify and/or otherwise affect the uniform exterior appearance of the Structures including without limitation any paint or other exterior finishing; any windows, walls or balconies; any awning, canopy or shutter; and/or exterior lighting schemes;
 - (b) involve a structural alteration or affect the Shared Facilities or penetrate another Element;
 - (c) reduce the size of the Element Exclusive Facilities or prevent or interfere with access to or use of any Element or any Project Facilities, except for temporary interruptions to the extent consistent with the Construction Practices;
 - (d) would be likely to increase by more than ten percent (10%) any line item of the Shared Facilities Costs over the then existing line item for such Shared Facilities Costs, or any increase in the Shared Facilities Costs of more than five percent (5%) in the aggregate over the Shared Facilities Costs for the preceding calendar year;
 - (e) modify the drainage facilities for The Properties; or
 - (f) have a material adverse effect on (i) the operation, use, occupancy, leasing, maintenance, construction, repair, replacement or condition of any other Element, (ii) the ability of any other Owner to satisfy the Project Standard with respect to the improvements comprising its Element, (iii) the access to or use of any Project Facilities (excluding temporary interruptions to such access or use),

or (iv) the overall costs and expenses incurred by any other Owner in operating, maintaining, repairing, constructing or replacing any of the improvements comprising its Element.

5.3 Construction Practices. Any alterations to the Elements (which, for purposes hereof shall include repair, reconstruction and replacement work), irrespective of whether the consent or approval of Shared Facilities Manager is required, shall be performed in compliance with the following provisions (the "Construction Practices"):

- (a) All alterations shall be consistent with the Project Standard.
- (b) All alterations shall be performed (i) with reasonable diligence and dispatch, (ii) in a good and workmanlike manner, (iii) in accordance with the Project Standard and all Legal Requirements, (iv) with respect to the portions of The Properties affected by any Project Encumbrances, in accordance with any requirements imposed by such Project Encumbrances, (v) pursuant to good, generally prevailing management practices and procedures which, to the extent reasonably feasible, will avoid or minimize any unreasonable resulting disturbances or interferences with the use, operation and occupancy of or access to and from any other Element, and (vi) by licensed contractors and/or service providers approved by Shared Facilities Manager that have (unless otherwise agreed in advance and in a written instrument by Shared Facilities Manager) policies of insurance covering such risks, in such amounts and otherwise in such forms as may be required by Shared Facilities Manager from time to time, including without limitation builder's risk insurance, worker's compensation insurance (as required by Legal Requirements), commercial general liability insurance, automobile liability insurance, product liability insurance, contractual liability insurance, and excess liability (umbrella) insurance. Each such policy of insurance shall name the Element Owner performing the alteration, Shared Facilities Manager and any other affected Element Owner (e.g., the applicable Burdened Element Owner, if the alteration affects Element Exclusive Facilities) and for as long as Declarant owns any portion of The Properties, Declarant, and their respective designees, as an additional insured, and shall be primary for any and all Losses arising out of or in connection with the contractor's and/or service provider's work. Such insurance shall also meet the insurance requirements of Section 11.9.
- (c) Before beginning any alteration, the Owner performing the alteration shall procure, at its expense, all necessary licenses, permits, approvals and authorizations from the City, the County, and any other applicable Governmental Authority, and shall deliver photocopies thereof to Shared Facilities Manager (and, if the alteration affects areas or facilities located in or

that benefit another Element, the Owner of such Element). Upon request, other Element Owners shall join in the application for such licenses, permits, approvals and authorizations whenever such action is necessary, and the Element Owner performing the alteration covenants that such other Element Owners and Shared Facilities Manager will not suffer, sustain or incur any cost, expense or liability or other Losses by reason thereof and agrees to indemnify each of them and hold them harmless against any such Losses.

- (d) At all times during the performance of any alteration (including during any removal, installation, construction, inspection, maintenance, repair and/or replacement of any equipment, facilities or other improvements), the Element Owner performing such alteration shall coordinate and stage all work with Shared Facilities Manager (and, if the alteration requires access to or affects areas or facilities that benefit another Element, the Owner of such Element) to minimize, as much as reasonably possible, impact and disruption on the other Elements and the Project Facilities, including without limitation vehicular and pedestrian access and traffic, the use and enjoyment thereof and the conduct of any business thereon.
- (e) The Element Owner performing the alteration shall be solely responsible for all costs incurred in connection with such alteration, such as an increase in costs of trash removal due to the work.
- (f) To the extent any alteration requires plans or plans have otherwise been prepared, the Element Owner performing such alteration shall provide copies of the as-built plans to Shared Facilities Manager (and, if the alteration affects areas or facilities located in or that benefit another Element, to the Owner of such Element).
- (g) All costs associated with any alteration hereunder shall be promptly and fully paid for by the Element Owner performing same. Without limiting the foregoing, no Owner shall permit any liens to attach to another Element or the Project Facilities as a result of its work and the Owner performing the alteration shall either bond over or pay and discharge any lien so attaching within twenty (20) days after the earlier of notice of the lien or demand by the Owner of such other Element or Shared Facilities Manager. Any Element Owner whose act or omission forms the basis for a lien on another Element shall indemnify and save the Owner of such Element and Shared Facilities Manager harmless from and against any and all Losses resulting therefrom. If an Element Owner shall fail to obtain within such twenty (20) day period the requisite release or transfer of any lien claim, then Shared Facilities Manager (or the Owner of the liened Element, if Shared Facilities Manager does not pursue same) may, at its option,

secure the release of the lien claim by any means available, including bonding or settlement, whereupon the defaulting Element Owner shall, within ten (10) days after demand, reimburse Shared Facilities Manager or the other Element Owner, as applicable, for the latter's costs and expenses incurred in securing the lien release, including reasonable attorneys' fees. Interest shall accrue at the Default Rate on the amount of any such reimbursement obligation not paid within ten (10) days after demand. Notices by any party under this paragraph shall be provided to Shared Facilities Manager, the Owner performing the alteration and any Owner of a liened Element.

- (h) The Element Owner performing the alteration shall be solely liable for all costs and expenses, and any Losses, incurred, caused or occasioned by its acts or omissions, the acts or omissions of its Permitted Users, as well as the acts or omissions of its contractors, service providers, agents and representatives who cause any damage to any other Element (or any portion thereof), and shall indemnify and hold the Owner of such damaged Element, Shared Facilities Manager and for as long as Declarant owns any portion of The Properties, Declarant, and its and their respective directors, officers, employees, contractors, agents or affiliates, harmless from and against any and all Losses in any way whatsoever connected with the alteration contemplated herein.
- (i) In addition to the foregoing, Shared Facilities Manager shall have the right to establish non-discriminatory rules and restrictions on any and all persons performing alterations with respect to any Element, including, without limitation, restricting the hours during which construction and/or repair work may be performed (including limiting jack hammers and other noisy work to specific hours designated by Shared Facilities Manager), imposing noise abatement requirements, restricting access of contractors to certain areas, designating specific staging areas, restricting access by trucks and construction vehicles, and requiring a security deposit or other collateral to protect against damage to the Shared Facilities or any Structure that may be caused during such work, which rules and regulations may be modified from time to time. Such rules may also establish procedures and standards for the submission and review of any matter that requires Shared Facilities Manager's approval, and for inspection and final approval of any completed work pursuant to an approval of Shared Facilities Manager hereunder. In addition, in order to assure that all work by any Owner is performed to the Project Standard, each Element Owner agrees to contract with Shared Facilities Manager and/or a vendor or contractor first approved by Shared Facilities Manager to perform any alteration hereunder.

- (j) With respect to any alterations, improvements or other work in progress, Shared Facilities Manager shall have the right to establish requirements and guidelines for the protection of all such work in progress from acts of God and other *force majeure* events such as (but not limited to) hurricanes, floods, acts of terrorism or war, civil disturbances and other events that would reasonably be anticipated to damage such work in progress or impact same in a way that would potentially threaten or place at risk the health, safety or welfare of any Owner or Permitted User or the property of any of the foregoing, or adversely impact other portions of The Properties.

5.4 Review of Alterations. Each Owner desiring to make any alterations for which approval of Shared Facilities Manager must be obtained shall submit all plans and specifications for the proposed alteration to Shared Facilities Manager. Shared Facilities Manager may condition its approval as it deems appropriate, and may require submission of additional plans and specifications (or more detailed plans and specifications); studies, reports and/or evaluations and any other materials from pre-approved consultants and other professionals confirming and detailing the potential effects (whether short-term or long-term) of such alterations on the Shared Facilities or any other portion of The Properties; and/or other information prior to approving or disapproving the material submitted. Review of any plans and specifications relating to alterations and any other activities of Shared Facilities Manager in connection with any Owner's alterations shall be solely and exclusively for Shared Facilities Manager's benefit. No person shall, under any circumstances, be a beneficiary of Shared Facilities Manager's requirements hereunder. Shared Facilities Manager may freely waive any of its requirements hereunder at any time if, in Shared Facilities Manager's sole discretion, it desires to do so. In particular, but without limitation, Shared Facilities Manager makes no representations and assumes no obligations to any Owners or any third parties concerning the quality of the construction of any alterations. In addition, the Shared Facilities Manager shall not be liable to any Owner or its Permitted Users or any other party for any Losses suffered or claimed by any Owner or its Permitted Users or any other party on account of any defects in such plans, or the failure of such plans or the alterations to comply with any Legal Requirements. Any approval tendered by Shared Facilities Manager shall under all circumstances be interpreted in a manner consistent with this limitation of Shared Facilities Manager's liability. With respect to any alterations that require Shared Facilities Manager's approval under this Article, each Owner shall pay Shared Facilities Manager a construction oversight fee equal to five percent (5%) of the total cost of the alterations, provided that if such cost exceeds \$1,000,000 the construction management fee shall be equal to three percent (3%) of such total costs to compensate Shared Facilities Manager's for its services. In addition, each Owner shall promptly upon request therefor reimburse Shared Facilities Manager for the amount of all reasonable fees and expenses incurred by it (including without limitation reasonable attorneys' fees and expenses, and reasonable fees and expenses of any architects, engineers and other

design professionals) in connection with Shared Facilities Manager's response to any requested approval of any proposed alterations.

- 5.5 Element Exclusive Facilities. The Owner of the Burdened Element shall not make alterations to the Element Exclusive Facilities within the Burdened Element, or to the Burdened Element that would impede in any material way the Benefitted Element Owner's use of the Element Exclusive Facilities or the benefits afforded by them, without the prior written consent of the Owner of the Benefitted Element served thereby, which consent shall not be unreasonably withheld. The Owner of the Benefitted Element shall not make alterations to the Element Exclusive Facilities serving it that would have a material adverse effect (as described in subsection 5.2(f)) on the Burdened Element in which such facilities are located with the consent of the Owner of such Burdened Element, which shall not be unreasonably withheld.

6. **MAINTENANCE OF STRUCTURES, ELEMENTS AND OTHER FACILITIES**

- 6.1 Maintenance of Shared Facilities. Subject to the other provisions hereof, Shared Facilities Manager shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Shared Facilities and, to the extent not otherwise provided for, the paving, water and sanitary sewer facilities, drainage structures, landscaping, improvements and other structures (except those Limited Shared Facilities, if any, to be maintained by Owners) situated on or comprising the Shared Facilities (if any), with all such work to be done as ordered by Shared Facilities Manager. All work pursuant to this Section, and all costs and expenses incurred by Shared Facilities Manager pursuant to this Article or any other provision of this Declaration (with respect to the Shared Facilities or otherwise, and whether or not so stated in any particular provision hereof), and all expenses allocated to the Shared Facilities Element or incurred by the Shared Facilities Element Owner with respect to the Shared Facilities Element, shall be paid for by Shared Facilities Manager through Assessments (either general or special) imposed in accordance with Article 15. Shared Facilities Manager shall have the power to incur, by way of contract or otherwise, expenses general to all or applicable portions of The Properties, or appropriate portions thereof, and Shared Facilities Manager shall then have the power to allocate portions of such expenses among the Element Owners and/or the Element Specific Managers, based on such formula as may be adopted by Shared Facilities Manager or as otherwise provided in this Declaration or any Supplemental Declaration. The portion so allocated to an Element Specific Manager shall be deemed a general expense thereof, collectible through its own assessments. No Owner may waive or otherwise escape liability for Assessments by non-use (whether voluntary or involuntary) of the Shared Facilities or abandonment of the right to use the Shared Facilities.

- 6.2 Exteriors of Structures. Without limiting the generality of Section 6.1, Shared Facilities Manager shall maintain all exterior surfaces and roofs, facias and soffits of the structures (including the Structures) and other improvements that are part of Shared Facilities located on the Elements (including driveway, sidewalk and other surfaces) in a neat, orderly and attractive manner consistent with the Project Standard. The aforesaid maintenance shall include maintaining the structural components of the improvements included in Shared Facilities (irrespective of the ownership of same), project-wide maintenance, repair and replacement of glass walls, windows¹, doors (including the framing and hardware associated with sliding glass doors), balconies and terraces and other Limited Shared Facilities comprising such improvements, provided that if repair or replacement of such improvements is due to damage caused by a particular Element Owner or any Unit Owner in such Element (or its or their Permitted Users), the cost thereof shall be paid solely by such Element Owner. Shared Facilities Manager shall clean, repaint or restain, as appropriate, the exterior portions of each Structure as often as is necessary to comply with the maintenance requirements set forth herein.
- 6.3 Maintenance of Elements. The Owner of each Element shall, at such Owner's cost and expense, maintain all interior and exterior portions of such Element, other than the Shared Facilities and other portions of The Properties designated to be maintained by Shared Facilities Manager or another Owner under this Declaration, in a neat, orderly and attractive manner consistent with the Project Standard and the other requirements of this Declaration. With respect to the maintenance of unique or other particular features of an Element, the following provisions shall apply:
- (a) As to any terrace, balcony or patio that is included in an Element (and not part of the Shared Facilities) and/or part of the Limited Shared Facilities used by any Element Owner or Unit Owner (as applicable), including without limitation, any terraces or patios adjacent to an Element and/or any Units, the applicable Owner or Unit Owner shall have exclusive use of same (subject to the rights of Shared Facilities Manager as elsewhere provided herein), and shall be responsible for the cleaning, maintenance, repair (other than any necessary structural or project-wide repairs or replacements, which shall be the responsibility of Shared Facilities Manager as hereinabove provided in this Article) and upkeep of same.
 - (b) The Owner of an Element that includes or has appurtenant recreational facilities or amenities areas or exclusive use rights with respect to such amenities, terraces, balconies or Limited Shared Facilities or other similar improvements, shall be liable for any Losses which may result from the existence of same, be it Losses to property and/or injury or death to persons, and shall indemnify and

¹ Client: Will the plate glass be maintained by each Owner or the Shared Facilities Manager?

hold Shared Facilities Manager and Declarant and its and their respective directors, officers, employees, contractors, agents or affiliates harmless from and against any and all Losses whatsoever connected with any such facilities, areas or improvements as contemplated herein.

(c) As to any windows and glass doors bounding an Element or Unit (as applicable), together with all hardware, framing and/or sealing of same, the applicable Owner or Unit Owner shall be liable for the routine repair and upkeep (as opposed to the project-wide maintenance, repair and replacement of such improvements required of Shared Facilities Manager as hereinabove provided in this Article) as necessary to maintain same in good working order and in accordance with the Project Standard and other requirements of this Declaration.

(d) ***[address other unique features within or appurtenant to the Elements, if any]***

6.4 Landscaping. Shared Facilities Manager shall maintain and irrigate, and replace when necessary, the trees, shrubbery, grass and other landscaping included in the Shared Facilities, including without limitation landscaping around and/or serving any exterior portion of The Properties and exterior landscaping on any Element that are part of the project-wide landscaping scheme or visible by more than one Element, in a neat, orderly and attractive manner and consistent with the general appearance of The Properties as a whole and the Project Standard. Each Owner of an Element shall be responsible for maintenance, irrigation and/or replacement of landscaping within its Element that is not part of the project-wide landscaping scheme or visible by more than one Element, at such Owner's cost and expense. Shared Facilities Manager shall have the right to delegate responsibility for landscaping located within any Element to the Owner of such Element, at its expense, as provided in Section 6.8 below. Landscaping shall be maintained by any party responsible therefor hereunder consistent with the general appearance of The Properties as initially landscaped (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained), in addition to consistency with the Project Standard.

6.5 Exterior Project Lighting. Shared Facilities Manager shall be responsible for the operation, maintenance, repair and replacement of all exterior project lighting and all street or exterior lighting fixtures, installations and equipment serving or being part of the Shared Facilities (solely or primarily) and/or which are part of an exterior lighting scheme applicable to more than one Element within Three Hundred Alton, even if same are located within an Element other than the Shared Facilities Element or the common areas/elements owned or administered by the Owner thereof or Element Specific Manager therefor (and said fixtures, installations and equipment shall be deemed

Shared Facilities for the aforesaid purposes). In the event of doubt as to whether any particular street or exterior lighting serves or is part of the Shared Facilities solely or primarily, or is part of an exterior lighting scheme applicable to more than one Element within Three Hundred Alton, the decision of Shared Facilities Manager in such regard shall be final and conclusive. No Element Owner (or Unit Owner), shall make any change or modification to any exterior project lighting fixtures, installations and equipment serving or being part of the Shared Facilities (solely or primarily) and/or which are part of an exterior lighting scheme applicable to more than one Element within Three Hundred Alton, or any change and/or modification which may affect the exterior project lighting scheme. Notwithstanding the foregoing, in the event that any Owner and/or Element Specific Manager requests Shared Facilities Manager to maintain, repair or replace any street or exterior lighting fixtures, installations or equipment which would not otherwise fall under Shared Facilities Manager's responsibilities hereunder, then Shared Facilities Manager may (in its sole discretion) do so as long as all costs and expenses thereof are paid by the requesting Owner and/or Element Specific Manager. Charges for electricity used by street or exterior lights billed to (a) an Element (other than the Shared Facilities Element) shall be paid by the Owner thereof or Element Specific Manager therefor (as applicable), and (b) the Shared Facilities Element or Shared Facilities Manager shall be part of the Assessments charged to Owners by Shared Facilities Manager. Each Owner of an Element agrees to comply with the lighting criteria and requirements adopted by Shared Facilities Manager with respect to interior lighting within any Element that is visible from the exterior of The Properties, which criteria and requirements are designed or intended to preserve a consistent and uniform appearance relative to lighting at Three Hundred Alton, provided that no Owner of an Element shall be required to replace lighting previously installed in its Element in compliance with the terms of this Declaration and/or any approvals by the Shared Facilities Manager hereunder in order to comply with the foregoing covenant.

- 6.6 Water, Sewer and Drainage Facilities. The maintenance obligations of Shared Facilities Manager shall include, without limitation, (a) the duty and obligation to operate and maintain any portion of the private water and sanitary sewer facilities (regardless of where located within The Properties) serving the Shared Facilities Element and/or more than one Element in accordance with the Project Encumbrances, the requirements of the Water and Sewer Department for the County and any other applicable Governmental Authority, and (b) the duty and obligation to (i) operate and maintain any portion of the surface water management system (regardless of where located with The Properties) serving the Shared Facilities Element and/or more than one Element in accordance with any permit(s) issued by the Department of Environmental Resources Management (DERM) and/or any other applicable water management district and the Project Encumbrances (as applicable), (ii) carry out, maintain, and monitor any required

wetland mitigation tasks and (iii) maintain copies of all permitting actions and other documentation with regard to same.

- 6.7 Maintenance of Element Exclusive Facilities. Notwithstanding the location of Element Exclusive Facilities within the Burdened Elements, the systems, equipment and other facilities located within or comprising the Element Exclusive Facilities (such as the elevator cabs, cables, machinery and equipment, the HVAC systems, the wires, cables, generators and other apparatus used in the delivery of the utility services, etc.), to the extent installed by the Owner of the Benefitted Element served exclusively thereby, shall be and remain the property of such Benefitted Element Owner. The Element Exclusive Facilities shall be solely maintained, repaired and replaced by the Owner of the Benefitted Element served exclusively by such facilities, at its cost and expense (and neither any other Owner (including the Owner of the Burdened Element) nor Shared Facilities Manager shall have any obligation for the maintenance, repair or replacement of same or the cost thereof). In order to accommodate the foregoing, Declarant has reserved and granted the easements set forth in Section 4.7 in favor of all future Owners of the Benefitted Elements (and their respective designees).
- 6.8 Maintenance Generally. Notwithstanding anything contained herein to the contrary, the following general provisions shall govern with respect to maintenance obligations under this Declaration:
- (a) All maintenance obligations must be undertaken by the party responsible therefor (including Shared Facilities Manager and any Owner) in such a manner and as frequently as necessary to assure (at a minimum) that the portions being maintained are consistent with the general appearance of The Properties as initially constructed and otherwise improved (and with respect to Structures and other exterior improvements, taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness), and otherwise in accordance with the Project Standard and in compliance with all Legal Requirements and the terms and conditions of the Project Encumbrances (where applicable).
 - (b) With respect to the maintenance obligations of the Element Owners set forth in this Declaration, and to assure that the maintenance is performed to the Project Standard (or such higher standard as may be required hereunder), each Element Owner agrees (i) unless waived by Shared Facilities Manager, to contract with Shared Facilities Manager and/or a vendor first approved by Shared Facilities Manager to perform such maintenance (i.e., no vendor shall be used by any Owner to perform maintenance work hereunder unless such vendor is pre-approved by Shared Facilities Manager), and (ii) to perform all maintenance and repairs to its Element (or any portion thereof) in accordance with the

Construction Practices. Shared Facilities Manager may waive its right to approve vendors hereunder at any time if, in Shared Facilities Manager's sole discretion, it desires to do so. In addition, Shared Facilities Manager's failure to enforce the requirements set forth in this subsection shall not be deemed a waiver of such right or restrict Shared Facilities Manager's right to enforce same in the future, nor shall Shared Facilities Manager be liable to any Owner or its Permitted Users or any third parties on account of such failure to enforce such requirements.

- (c) Shared Facilities Manager shall have the right to delegate maintenance responsibilities for certain portions of Shared Facilities (such as, by way of example and not limitation, landscaping, signage and the like) located within, appurtenant to or designated for the exclusive use of any Element to the Owner of such Element on a temporary or permanent basis as may be determined by Shared Facilities Manager. Upon any such delegation, to the extent such maintenance responsibilities are shifted from Shared Facilities Manager hereunder to another Element Owner, Shared Facilities Costs shall be reasonably adjusted and the Owner of the applicable Element shall perform the maintenance responsibility so delegated at its sole cost and expense in accordance with the requirements of this Declaration and the Project Standard. Nothing contained herein shall limit or restrict the right and ability of any Element Owner who has been delegated maintenance responsibilities hereunder for any Shared Facilities to agree to perform (or cause the performance of) of such maintenance obligations jointly or on a cooperative basis. Any delegation made pursuant hereto may be modified or revoked by the Shared Facilities Manager at any time.

- 6.9 Right of Entry. In addition to such other remedies as may be available under this Declaration, in the event that an Owner fails to maintain a Structure, Element, Limited Shared Facilities or Element Exclusive Facilities as required hereby, Shared Facilities Manager shall have the right to enter upon the Element in question or the Burdened Element (in the case of the failure to maintain Element Exclusive Facilities) and perform such duties; provided, however, that other than in the event of an emergency (in which case no notice is required, though notice shall be provided within a reasonable time following an emergency), such entry shall be during reasonable hours and only after five (5) business days' prior written notice (or such longer time as may reasonably be required to effect such repair to the extent that said curative activity cannot reasonably be completed within such five (5) business day period). The Owner having failed to perform its maintenance duties shall be liable to Shared Facilities Manager for the costs of performing such remedial work and shall pay a surcharge of not more than twenty-five percent (25%) of the cost of the applicable remedial work, all such sums being payable upon demand and to be secured by the lien provided for in Article 15 hereof. Without limiting the generality of the foregoing, Shared Facilities Manager shall have all

of the same rights to bring an action at law against the Owner having failed to perform its maintenance duties, to record a claim of lien against such Owner's Element, to foreclose such lien, and/or to exercise any and all other remedies under this Declaration or applicable law, as are available to Shared Facilities Manager with respect to an Owner's failure to pay any Assessments under Article 15 hereof. No bids need be obtained for any of the work performed pursuant to this Section and the person(s) or company performing such work may be selected by Shared Facilities Manager in its sole discretion. There is hereby created an easement in favor of Shared Facilities Manager, and its applicable designees over each Element for the purpose of entering onto the Element in the performance of the work herein described, provided that the notice requirements of this Section are complied with.

6.10 Common Electric Vehicle Charging Station. To the extent that The Properties now or hereafter contains Electric Vehicle Charging Stations within the Shared Facilities for the benefit of undesignated Owners (e.g., not an EVCS within, or solely for, an exclusively assigned parking space) ("Common EVCS"), then the following provisions shall be applicable:

- (a) The Shared Facilities Manager may adopt, from time to time, rules and regulations regarding the use of the Common EVCS, including, without limitation, rules and regulations regarding the reservation of access to the EVCS, the frequency of use, minimum and/or maximum usage rights, the costs for usage, permitted hours of use and the maintenance responsibilities attributable to usage.
- (b) As a condition of use of the Common EVCS, any such user must maintain a liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the Shared Facilities Element Owner and Shared Facilities Manager as named additional insureds under the policy with a right of not less than ten (10) days' prior written notice of cancellation.
- (c) Each Owner using the Common EVCS shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Declarant, Declarant's Affiliates, Shared Facilities Element Owner and Shared Facilities Manager harmless from and to indemnify them against any liability or damage to The Properties, and/or from damages to any persons or personal property resulting from, connected with, or relating to, directly or indirectly, the Owner's use of the Common EVCS, or the use of the Common EVCS by such Owner's tenant, guest, invitee or other person utilizing same by, through or under the Owner.

- (d) All costs of operation, maintenance, repair and replacement of the Common EVCS, other than utility consumption charges, shall be deemed to be Shared Facilities Costs.
- (e) The Shared Facilities Manager shall have sole discretion whether to implement a pay per use method with regard to utility consumption costs incurred in connection with use of the Common EVCS. In the absence of such a pay per use policy, the utility consumption charges shall be Shared Facilities Costs. To the extent that utility consumption charges can be monitored on a per use basis, said charges shall be assessed to the Owner utilizing same (whether such use is by the Owner, or his or her guest, tenant or invitee) for the costs of such utility consumption measured and paid for in direct relation to the consumption identified. Such charges may be enforced and shall be collectible by the Shared Facilities Manager in the same manner as other Shared Facilities Costs.

7. **CERTAIN USE RESTRICTIONS**

- 7.1 **Applicability.** The provisions of this Article 7 shall be applicable to all of The Properties but shall not be applicable to Declarant, the Shared Facilities Element Owner, Shared Facilities Manager or any of its or their designees or to Elements or other property owned by Declarant, the Shared Facilities Element Owner or its or their designees.
- 7.2 **Uses of Elements and Structures.** All Elements and Structures shall be used for the general purposes for which they are designed and intended and at all times used, operated and maintained in accordance with applicable zoning and other Legal Requirements, and any conditions and restrictions applicable to same (including, without limitation, any contained in the Project Encumbrances or a deed or lease of the Element/Structure from Declarant, as same may be amended from time to time). **Notwithstanding anything herein contained to the contrary, the name of the Element is assigned only for convenience of reference, and is not intended, nor shall it be deemed to limit or otherwise restrict, the permitted uses thereof.**
- 7.3 **Utilities.** Use of the Shared Facilities for utilities, as well as use of the other utility easements affecting The Properties as shown on relevant plats or by separate recorded instruments, shall be in accordance with the applicable provisions of this Declaration and said plats or recorded instruments. Notwithstanding anything herein to the contrary, access to and use of FPL Vault Rooms within The Properties shall be subject to any and all limitations, restrictions or requirements of Florida Power & Light Company (and its successors and assigns) pursuant to any recorded instruments, policies of the utility company or otherwise.

- 7.4 Nuisances and Noise. Nothing shall be done or maintained on any Element which may be or become an annoyance or nuisance to the occupants of other Elements, and no use or operation will be made, conducted or permitted on any part of The Properties which use or operation is clearly incompatible or inimical to the development or operation of Three Hundred Alton in accordance with the Project Standard. Included among the uses which are so incompatible or inimical are uses or operations which consist of the following uses or which produce or are accompanied by the following characteristics, which list is not intended to be all inclusive:
- (a) motor vehicle service, fuel or gas stations (electric car charging stations shall be permitted), motor vehicle repairs including without limitation any body and fender repair work, car washes, or the displaying, renting, leasing, or sale of any automobile, truck, boat, trailer or other motor or recreational vehicle that is not entirely conducted inside of a building;
 - (b) a venture whose primary business is operation of video or arcade games;
 - (c) adult book or video store;
 - (d) warehouse or industrial use;
 - (e) self-storage facility;
 - (f) any use with a drive-through other than (A) a coffee shop (e.g., Starbucks or Caribou Coffee), (B) banking facilities (provided that this shall not prohibit a banking operation within a retail establishment operating in more than 10,000 square feet), (C) cleaners, if otherwise permitted herein, or pharmacies (such as CVS or Walgreens; provided, however, that this shall not prohibit an in-store pharmacy within a retail establishment operating in more than 10,000 square feet);
 - (g) fast food restaurant (e.g. McDonald's, provided that this shall not prohibit a healthy fast-casual restaurant operation within a retail establishment operating in more than 10,000 square feet, e.g. Blaze Pizza and Jugo Fresh);
 - (h) convenience store, other than a convenience or sundry store within the Commercial Element;
 - (i) establishment for the sale of guns or other firearms, except by a sporting goods retailer that sells firearms as an ancillary use;
 - (j) tattoo or piercing parlor;

- (k) so-called "head shops," which are defined as facilities primarily used for selling products intended to assist, aid, or used in conjunction with the consumption of illegal drugs;
- (l) sale or provision of marijuana, whether for therapeutic, medicinal or other purposes (other than dispensed by a licensed pharmacist);
- (m) any obnoxious odor except customary odors emanating from restaurants;
- (n) any fire, explosion or other damaging or dangerous hazard, including the storage, display, or sale of explosives or fireworks (other than incidental sales thereof by a retail establishment operating in more than 20,000 square feet);
- (o) any distillation (other than so-called micro-brewing of beer), refining, smelting, agriculture or mining operations;
- (p) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising; provided, however, that, notwithstanding the foregoing, pet shops shall be permitted;
- (q) any drilling for and/or removal of subsurface substances;
- (r) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (s) any cemetery, mortuary or similar service establishment;
- (t) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction operation;
- (u) any church, synagogue, mosque or other place of worship or other religious use;
- (v) any venture whose primary business is on-site entertainment, recreation or amusement uses for the general public, whether directed to children or adults, including, but not limited to, any one or more of the following: movie theatre, skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, massage parlor or the provision of therapeutic massages, off-track betting facility, casino, card club, bingo parlor, facility containing gaming or gambling equipment, planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, gold simulations, rodeo simulations, other sport simulations and carnival activities;

- (w) any school, training, or educational facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business, a learning center for children and teenagers such as Sylvan Learning Center, any school affiliated with an accredited public university, college, or junior college in the State of Florida, or a day care facility;
- (x) any dry cleaning facilities utilizing hazardous substances with an on-premises plant; provided, however, that nothing contained herein shall preclude a drop-off/pick-up dry cleaning business as long as no cleaning services are conducted at such location;
- (y) warehousing or storage facilities of any kind unless incidental to another use permitted on The Properties;
- (z) call center or similar use other than in connection with a sub-station for police, fire, security and life-safety purposes;
- (aa) use or occupancy of a Structure by a discount or reduced-price general or specialty retailer or merchandiser, including, but not limited to, Wal-Mart, Costco, K-Mart, Sam's Club, T. J. Maxx, or Marshall's, provided, however, that Target shall not be prohibited; and
- (bb) a hospital and/or an urgent care medical facility.

Any activity on an Element which interferes with television, cable or radio reception on another Element shall also be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance or otherwise a violation hereof, such dispute or question shall be submitted to Shared Facilities Manager, who shall render a decision in writing, which decision shall be dispositive of such dispute or question. Notwithstanding anything herein contained to the contrary, each Owner, by acceptance of a deed or other conveyance of any portion of The Properties, shall be deemed to understand and agree that Three Hundred Alton (and the Elements within it) is an active urban environment that will likely attract a broad and diverse base from among the public. It is hereby confirmed generally that any and all activities typical of such an urban environment or in any way related to any and all such operations, including any associated noise, traffic congestion and/or other inconveniences, shall not be deemed a nuisance hereunder. There are a number of existing buildings and potential building sites that are contemplated nearby to, Three Hundred Alton. As such, Owners and their Permitted Users will be affected by

construction noise during the construction of Three Hundred Alton and/or other noise that exists in urban environments (including, but not limited to, vehicle and traffic noise (including loading and unloading of trucks), construction noise from other buildings or building sites, sirens and horns, noise from restaurants and clubs, festivals or other gatherings, loud music, mechanical noise from the Structures within or neighboring The Properties), and/ or aircraft noise). Other operations at or near The Properties, including without limitation, the operations from the commercial marina adjacent to The Properties, may result in the creation of noise, odors, night lighting and other potential disruptions, which may affect all portions of The Properties and the use and enjoyment of same. By acquiring any portion of The Properties, each Owner, for such Owner and its Tenants and other Permitted Users, and its and their successors and/or assigns, agrees (i) that none of the foregoing noises, odors, lights, disruptions or operations during the day or at night shall be deemed a nuisance hereunder, (ii) not to object to any of the foregoing noises, odors, lights, disruptions or operations or any other operations, and (iii) to release Declarant, Shared Facilities Manager and the owner and/or operator of the nearby marina from any and all claims for damages, liabilities and/or losses suffered as a result of the existence of the operations from the various Elements and/or properties adjacent thereto, including, without limitation, the marina, and the noises, inconveniences and disruption resulting therefrom.

- 7.5 Parking and Vehicular Restrictions. Parking in or on the Shared Facilities shall be restricted to the parking areas therein designated for such purpose (if any). Except only as may be expressly permitted by Shared Facilities Manager, no person shall park, store or keep on any portion of the Shared Facilities any large commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), nor may any person keep any other vehicle on the Shared Facilities which is deemed to be a nuisance by Shared Facilities Manager. No trailer, camper, motor home or recreation vehicle shall be used as a residence, either temporarily or permanently, or parked on the Shared Facilities. Except only as may be expressly permitted by Shared Facilities Manager, no person shall conduct major repairs (except in an emergency) or major restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the Shared Facilities. All vehicles will be subject to height, width and length restrictions and other rules and regulations now or hereafter adopted by Shared Facilities Manager.
- 7.6 Master Life Safety Systems. No Owner shall make any additions, alterations or improvements to the Master Life Safety Systems, and/or to any other portion of The Properties which may impair the Master Life Safety Systems or access to the Master Life Safety Systems, without first receiving the prior written approval of Shared Facilities Manager. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency

signage shall not be altered or removed by any Owner or Unit Owner whatsoever. No barrier including, but not limited to, personalty, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

- 7.7 Signs. Subject to the terms of Section 3.7, no sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Shared Facilities without the prior written consent of Shared Facilities Manager, except signs, regardless of size, used by Declarant, its successors or assigns, for advertising during the construction, sale and leasing period.
- 7.8 Animal Restriction. Except for service animals permitted by applicable law or other pets to the extent reasonably allowed by an Element Owner on its respective Element and customarily permitted at developments comparable to Three Hundred Alton, no pets, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on or in any portion of The Properties. Domesticated dogs and/or cats may be maintained on The Properties provided such pets: (a) are permitted to be so kept by applicable Legal Requirements, (b) are not left unattended on balconies, terraces or in lanai areas, (c) generally, are not a nuisance to residents of other Elements or of neighboring buildings and (d) are not a breed considered to be dangerous by Shared Facilities Manager, in its sole discretion; provided, however, that (i) Shared Facilities Manager shall not be liable for any personal injury, death or property damage resulting from a violation of the foregoing or the existence of pets on The Properties in general, (ii) any Owner or occupant who keeps or maintains a pet within The Properties shall fully indemnify and hold harmless Shared Facilities Manager, Declarant and all other Owners, from and against any and all Losses whatsoever arising by reason of keeping or maintaining such pet within The Properties, and (iii) pets (including domesticated dogs and/or cats) may not be maintained on any Element if precluded by the Owner of such Element or any Element Specific Declarations (or any rules and regulations promulgated thereunder). Any landscaping damage or other damage to the Shared Facilities or any other portion of The Properties caused by a pet must be promptly repaired by the pet's owner. Shared Facilities Manager retains the right to effect said repairs and charge the owner therefor. Any Element Owner that allows pets shall continue to operate its Element in a manner that is consistent with the Project Standards, all applicable Legal Requirements and the standards of comparable operations that are "pet friendly". Any Element Owner may establish additional rules, regulations and restrictions with respect to animals within its Element, subject to applicable Legal Requirements.
- 7.9 Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted on the Shared Facilities, except in those areas expressly designed for same or as otherwise approved by Shared Facilities Manager, and no odor shall be permitted to arise therefrom so as to render the Shared Facilities or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its

occupants. Rubbish, trash, garbage or other waste materials within the Elements shall be maintained in secure areas not visible to the public. Trash receptacles located in the public areas of any Element intended for public use shall be kept and maintained in a neat, clean and sanitary condition, and shall be emptied as often as necessary to prevent same from becoming unsightly and/or emitting unpleasant odors. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, except within an enclosed structure appropriately screened from view erected for that purpose, if any, and otherwise in accordance with the approval of Shared Facilities Manager. All Owners and Tenants shall segregate and save for collection all recyclable refuse if required by (and in accordance with) Legal Requirements.

- 7.10 Temporary Structures. Except as may be used or permitted by Declarant or Shared Facilities Manager during periods of construction or renovation, no structure of a temporary nature (including, without limitation, trailers, tents, shacks or mobile homes or offices) shall be located or used within The Properties.
- 7.11 Post Tension Restrictions. Notwithstanding anything herein contained to the contrary, inasmuch as the improvements constructed within The Properties have utilized post tension cables and/or rods, absolutely no penetration shall be made to any floor, roof or ceiling slabs without the prior written consent of Shared Facilities Manager and review of the as-built plans and specifications for such improvements to confirm the approximate location of the post tension cables and/or rods. The plans and specifications for such improvements shall be maintained by Shared Facilities Manager. Each Owner, by accepting a deed or otherwise acquiring title to an Element or Unit shall be deemed to: (i) have assumed the risks associated with post tension construction, and (ii) agree that the penetration of any post tension cables and/or rods may threaten the structural integrity of the improvements. Each Owner hereby releases Shared Facilities Manager, Shared Facilities Owner and Declarant, its and their partners, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents, from and against any and all liability that may result from penetration of any of the post tension cables and/or rods.
- 7.12 Hurricane Evacuation Procedures. Upon notice of approaching hurricanes, all furniture, plants and other movable objects must be removed from any sidewalks, balconies, terraces and/or other outdoor areas. IN THE EVENT THAT AN EVACUATION ORDER IS ISSUED BY ANY APPLICABLE GOVERNMENTAL AGENCY, ALL OWNERS MUST PROMPTLY COMPLY WITH SAID ORDER. Shared Facilities Manager shall have the right from time to time to establish hurricane preparedness and evacuation policies, and each Owner shall fully comply with same (and shall cause its Tenants and other Permitted Users to do so as well).

- 7.13 Additional Restrictions. Shared Facilities Manager may from time to time impose additional restrictions on The Properties or any portion thereof by Supplemental Declaration executed by Shared Facilities Manager without the consent or joinder of any person or entity (other than Declarant's Mortgagee and the Owner(s) of the encumbered property if other than Declarant), whereupon such additional restrictions shall encumber and be binding upon the portions of The Properties stated therein.
- 7.14 Variances. Shared Facilities Manager shall have the right and power to grant variances from the provisions of this Article 7 and from Shared Facilities Manager's rules and regulations for good cause shown, as determined in the reasonable discretion of Shared Facilities Manager. Grounds for granting a variance may include, without limitation, changes in circumstances, Legal Requirements, other construction or uses on The Properties or nearby land, or bona fide good faith error in submission or review of documents or materials. In considering requests for variances, Shared Facilities Manager may take into account the pattern of development, consistency in treatment of requests for variances, and the relationship between the cost to the Owner of the variance not being granted and the importance of the covenant from which a variance is being sought. Shared Facilities Manager may require the submission of such documents and items (including, without limitation, written request for and a detailed description of the variance requested), as it reasonably considers appropriate, in connection with its consideration of a request for a variance. If Shared Facilities Manager approves such request for a variance, Shared Facilities Manager shall evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the portion of The Properties relative to which such variance has been requested, describing the applicable covenant(s) and the particular variance requested, expressing the decision of Shared Facilities Manager to permit the variance, describing (when applicable) the conditions (which may be affirmative and/or negative in nature) on which the variance has been approved signed by Shared Facilities Manager. Any request for a variance will be considered disapproved for the purposes hereof in the event of either (a) written notice of disapproval from Shared Facilities Manager; or (b) failure by Shared Facilities Manager to respond to the request for variance within thirty (30) days following its submission. Any variance granted or denied by Shared Facilities Manager shall not preclude Shared Facilities Manager from granting or denying a variance in any other circumstance, and no variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article 7 in any instance in which such variance is not granted, nor shall same alter, waive or impair the operation or effect of any restrictions, requirements or provisions contained in any Project Encumbrances then in effect (which shall remain in full force and effect unless and until a waiver or variance is granted in accordance with the provisions thereof). Shared Facilities Manager shall not be liable to any Owner, Permitted User or any other party with regard to any variance granted hereunder, nor shall Shared Facilities

Manager be responsible for the failure of any Owner, Permitted User or any other party to comply with the provisions of this Article 7.

7.15 Declarant Exemption. In order that the development of The Properties may be undertaken and The Properties established as a fully occupied community, no Owner, nor any Element Specific Manager shall do anything to interfere with Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of the development of The Properties, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development and/or enlargement (and in that regard, all models or sketches showing plans for development of The Properties, as same may be expanded, may be modified by Declarant at any time and from time to time, without notice); or
- (b) Prevent Declarant, its successors or assigns, or its or their contractors, subcontractors or representatives, from erecting, constructing and maintaining on any property owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said development and establishing The Properties as a community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any property owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements in The Properties and of disposing of Elements and/or Structures therein by sale, lease or otherwise; or
- (d) Prevent Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be initially constructed as part of The Properties; or
- (e) Prevent Declarant, its successors or assigns or its or their contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the operation of any Elements owned by Declarant (its successors or assigns) or the sale, lease

or other marketing of Elements and/or Structures, or otherwise from taking such other actions deemed appropriate; or

- (f) Prevent Declarant, or its successors or assigns from filing Supplemental Declarations which modify or amend this Declaration, or which add or withdraw additional property as otherwise provided in this Declaration; or
- (g) Prevent Declarant from subdividing any Element owned by it into more than one Element, or submitting any Element(s) owned by it (or any Element(s) created by such subdivision) and/or any improvements within any such Element(s) to the condominium or cooperative or other collective form of ownership; or
- (h) Prevent Declarant from modifying, changing, re-configuring, removing or otherwise altering any improvements located within The Properties.

In general, Declarant shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any matter with Declarant's plans for construction, development, use, sale or other disposition of The Properties or any part thereof.

8. SHARED FACILITIES MANAGER AND ELEMENT SPECIFIC MANAGERS

- 8.1 Preamble. In order to ensure the orderly development, operation and maintenance of The Properties as a unified project, including the Elements subject to the administration of Element Specific Managers as integrated parts of The Properties, this Article has been promulgated for the purposes of (a) giving Shared Facilities Manager certain powers to effectuate such goal, (b) providing for intended (but not guaranteed) economies of scale, (c) establishing the framework of the mechanism through which the foregoing may be accomplished, and (d) requiring special types of covenants to accurately reflect the maintenance and use of Elements where certain types of improvements are constructed within The Properties. Nothing contained herein shall necessarily suggest that Declarant will or will not, in fact, construct particular types of improvements nor shall anything herein contained be deemed an obligation to do so.
- 8.2 Cumulative Effect; Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Element Specific Declarations for Submitted Elements and Shared Facilities Manager may, but shall not be required to, enforce the latter; provided, however, that in the event of conflict between or among this Declaration and such Element Specific Declarations, or any articles of incorporation, bylaws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of the Element Specific Declarations shall be subject and subordinate to

this Declaration. The priority of this Declaration shall apply to, but not be limited to, the payment of and liens for assessments created in favor of Shared Facilities Manager and the Element Specific Managers as provided for herein. As to any Element Specific Manager which is a condominium association, no duties of same hereunder shall be performed or assumed by Shared Facilities Manager if same are required by Legal Requirements to be performed by the Element Specific Manager.

8.3 Compliance with Declaration. Each Element Specific Manager shall:

- (a) include in its annual budget an aggregate annual amount sufficient to pay its allocated share of Shared Facilities Costs under this Declaration as common expenses, and levy regular and special assessments against the Units in the Submitted Element sufficient to pay as and when due such aggregate annual amount of common expenses owed by it under this Declaration;
- (b) levy special assessments against the Units in the Submitted Element sufficient to cover any other monetary obligation of the Element Specific Manager under this Declaration, including without limitation payment obligations under any indemnities, the obligation to pay Taxes, the cost of any required maintenance and repairs, the amount of any shortfall in insurance proceeds from a casualty or the award from a condemnation, reimbursement obligations after a default by the Element Specific Manager or Submitted Element and the like;
- (c) comply with each and every obligation under this Declaration applicable to the Owner of its Element; and
- (d) cause each Unit Owner to comply with the terms and conditions of this Declaration and the applicable Element Specific Declaration (to the extent not in conflict with the terms hereof), and take any and all action available to such Element Specific Manager under such Element Specific Declaration, at law and in equity (including without limitation an action for specific performance and seeking injunctive relief) to ensure that each such Unit Owner complies with the terms and conditions of this Declaration and such Element Specific Declaration (to the extent not in conflict with the terms hereof).

8.4 Collection of Assessments; Payment Priority. The Element Specific Managers shall, initially, collect all assessments and other sums due Shared Facilities Manager and the applicable Element Specific Manager from the Unit Owners and/or other members of the Submitted Element. The Element Specific Manager will remit the assessments so collected to the respective payees pursuant to such procedures as may be adopted by Shared Facilities Manager. The sums so collected shall be applied first to the Assessments of Shared Facilities Manager and then to the assessments of the collecting

Element Specific Manager. For the avoidance of doubt, any sums collected by an Element Specific Manager shall be applied in the foregoing order of priority irrespective of any other obligations or liabilities whatsoever of the Element Specific Manager.

Subject to the priority of disbursements of collected lump sums as provided above, all regular and special assessments, interest, late charges, recovered costs of collection and other extraordinary impositions shall be remitted to the respective entity imposing same separate and apart from the priorities established above. All fidelity bonds and insurance maintained by an Element Specific Manager shall reflect any duties performed by it pursuant hereto and the amounts to be received and disbursed by it and shall name Shared Facilities Manager as an obligee/insured party for so long as its Assessments are being collected and remitted by the Element Specific Manager. Shared Facilities Manager may, from time to time by sixty (60) days' prior written notice to the affected Element Specific Manager(s), change the procedures set forth in this Section 8.4 in whole or in part. In the event of any change in Assessment collection procedures elected to be made by Shared Facilities Manager, the relative priorities of assessment remittances and liens (i.e., Shared Facilities Manager first and the applicable Element Specific Manager last) shall nevertheless still remain in effect, as shall Shared Facilities Manager's ability to modify or revoke its elections from time to time.

- 8.5 Additional Expense Allocations. In addition to the other expenses payable by Element Specific Managers hereunder, Shared Facilities Manager may, by written notice given to the affected Element Specific Manager at least sixty (60) days prior to the end of the Element Specific Manager's fiscal year, allocate and assess to the Element Specific Manager a share of the expenses incurred by the Shared Facilities Element Owner or Shared Facilities Manager (as applicable) which are reasonably allocable to the Element Specific Manager and/or the portion of The Properties within its jurisdiction (e.g., for utilities which are billed to the Shared Facilities Element Owner or Shared Facilities Manager, but serve in certain instances, only a Submitted Element). In such event, the expenses so allocated shall thereafter be deemed common expenses of the Submitted Element payable by the Element Specific Manager (with assessments collected from the Unit Owners and/or other members of the Submitted Element) to Shared Facilities Manager.
- 8.6 Non-Performance of Element Specific Manager Duties. The following provisions shall apply in the event of non-performance by an Element Specific Manager of its duties hereunder:
- (a) In the event of a failure of an Element Specific Manager to comply with any of its obligations hereunder, Shared Facilities Manager shall have the same rights against the Element Specific Manager, any Unit Owners and/or other members of the Submitted Element, and its and their Permitted Users, as are available to

Shared Facilities Manager with respect to other Owners and their Permitted Users under this Declaration, including without limitation Article 9.

- (b) In the event of a failure of an Element Specific Manager to budget or assess the Unit Owners or other members of the Submitted Element for expenses as provided under Sections 8.3 or 8.5, or to remit to Shared Facilities Manager all amounts collected by it for payment of such Element Specific Manager's Assessments, then, in addition to (and without waiving) any other right or remedy available to Shared Facilities Manager under this Declaration, at law or in equity, Shared Facilities Manager shall be entitled to pursue and specially assess the Unit Owners or other members of the Element Specific Manager and their Units directly for the sums due (such special assessments, as all others, to be secured by the lien provided for in this Declaration).
- (c) In addition to the foregoing, and subject to the limitations set forth in Section 8.2 of this Declaration, in the event that any Element Specific Manager fails to perform any duties delegated to, or required of, it under this Declaration, or to otherwise be performed by it pursuant to its own Element Specific Declaration, articles of incorporation, by-laws or related documents, which, in the case of the Element Specific Declaration (or related governing documents), constitutes a breach by the Element Specific Manager of its duties under this Declaration, and such failure continues for a period in excess of thirty (30) days after Shared Facilities Manager's giving notice thereof, then Shared Facilities Manager may, but shall not be required to, assume such duties. In such event, the Element Specific Manager shall not perform such duties unless and until such time as Shared Facilities Manager directs it to once again do so. Alternatively, Shared Facilities Manager may apply for the appointment of a receiver in accordance with Legal Requirements to take control of the responsibilities of the Element Specific Manager, and Shared Facilities Manager shall be entitled to the appointment of such a receiver as a matter of right, who shall perform the obligations of the Element Specific Manager under this Declaration and the Element Specific Declaration as necessary to comply with the terms hereof. In such event, the receiver shall have all rights and powers permitted under the laws of the State of Florida and any other applicable Legal Requirements, subject to the approval of the court in any receivership proceeding.
- (d) Shared Facilities Manager shall be entitled to inspect the books and records of any Element Specific Manager, including without limitation ownership and financial records, as necessary or desirable to exercise and/or enforce its rights under this Section 8.6.

8.7 General Provisions Regarding Submitted Elements. The following general provisions shall apply to Submitted Elements:

- (a) As provided in Section 1.1 of this Declaration, a single Element or Structure shall not lose its character as such for the purposes of this Declaration by virtue of being subdivided into condominium, cooperative or other collective ownership Units by an Element Specific Declaration. As also provided in Section 1.1, the Element Specific Manager for an Element/Structure submitted to such form of ownership shall be deemed to be the Owner of such Submitted Element, even though same may not actually be the owner of the Element/Structure (or any portion thereof). Notwithstanding the fact that the Element Specific Manager of a Submitted Element shall be deemed to be the Owner of such Submitted Element, the easements of use and enjoyment granted hereunder to Owners shall be deemed to also be granted to the constituent members of the Submitted Element and the owners of the various portions of the applicable Submitted Element (and their Tenants and other Permitted Users as and to the extent permitted under this Declaration and the Element Specific Declaration governing the Submitted Element).
- (b) For the purposes of complying with and enforcing the standards of maintenance contained herein, the building comprising the Submitted Element shall be treated as a Structure, with the Element Specific Manager to have the maintenance duties of an Owner with respect to such Structure and any appurtenant facilities as set forth herein.
- (c) Each Element Specific Manager shall be jointly and severally liable with the Unit Owners in its Element for any violation of the use restrictions set forth in this Declaration or of rules and regulations of Shared Facilities Manager. Each Element Specific Manager shall also be liable and responsible for its compliance and the compliance by the Unit Owners in its Submitted Element (and its and their Permitted Users) with the covenants, restrictions and requirements of this Declaration. Accordingly, while Shared Facilities Manager shall have the right (exercisable at its sole option) to proceed against each Unit Owner for a violation of this Declaration, it shall also have a direct right to do so against the Element Specific Manager (even if the violation is not caused by the Element Specific Manager or by all of the Unit Owners).
- (d) With respect to a Submitted Element that is a condominium, assessments levied hereunder against such Submitted Element shall be but a single lien on the entirety of such Element and shall be payable by the Owner thereof (i.e., the Element Specific Manager therefor), but same shall not be deemed to be a common expense of such condominium. Notwithstanding the provisions of

718.121(3) of the Florida Statutes, inasmuch as this Declaration and the lien created hereby shall be recorded prior to the recording of any relevant Element Specific Declaration, it is intended that 718.121(1) of the Florida Statutes shall not be operative as to such lien and each applicable Unit Owner of a Submitted Element that is a condominium shall be deemed to have ratified and confirmed same by the acceptance of the deed to such Unit.

- 8.8 Multiple Element Specific Declarations. To the extent that any portion of The Properties is subject to more than one Element Specific Declaration, the rights of Shared Facilities Manager hereunder shall be cumulative and shall apply with respect to all Element Specific Managers under such Element Specific Declarations.
- 8.9 Element Subjected to a Long-Term Lease. To the extent that any portion of The Properties is subjected to a Long-Term Lease, then, the following provisions shall be applicable for as long as the Long-Term Lease remains in effect:
- (a) Except only as otherwise provided or when the context otherwise requires, the tenant under the Long-Term Lease for an Element or other portion of The Properties shall be deemed to be the Owner of the property subjected to the Long-Term Lease, even though same may not actually be the fee owner of the property subjected to the Long-Term Lease.
 - (b) Notwithstanding anything to the contrary, any and all notices hereunder asserting a default, delinquency or violation of the terms of this Declaration required to be given to the Owner of an Element governed by a Long-Term Lease must be given simultaneously to the tenant and landlord under the applicable Long-Term Lease.
 - (c) To the extent that the Shared Facilities, or any portion thereof, is subjected to a Long-Term Lease, in no event shall the rents or other charges imposed thereunder be deemed part of the Shared Facilities Costs.
 - (d) To the extent that any portion of The Properties is simultaneously subjected to multiple Long-Term Leases (e.g., a ground lease and a sublease), then as to such overlapping portions of The Properties, the sublessee/subtenant shall be deemed the Owner of the applicable portion(s) rather than the lessee/tenant.

9. COMPLIANCE AND ENFORCEMENT

- 9.1 Compliance by Owners. Every Owner and its Tenants and Permitted Users shall comply with the restrictions and covenants set forth herein and any and all rules and

regulations which from time to time may be adopted by Shared Facilities Manager (as to the Project Facilities or with respect to Three Hundred Alton).

- 9.2 Enforcement. Failure of an Owner and its Tenants and/or other Permitted Users to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, an action for specific performance or seeking injunctive relief, or any combination thereof. Following such breach, Shared Facilities Manager shall have the right to suspend such Owner's (and its Tenants' and/or other Permitted Users') rights of use of Project Facilities; provided, however, that no Owner shall be denied (i) legal pedestrian access to and from the Owner's Element and/or Units, as applicable, or (ii) use of any utility and/or mechanical, electrical, HVAC, plumbing, life safety, monitoring, information and/or other systems located in the Shared Facilities or the Element Exclusive Facilities and serving said Owner's Element and/or Unit, as applicable, or (iii) the use and benefit of the easements of support granted herein (without otherwise providing equivalent substitutions for same). The offending Owner (whether such offense be caused by the Owner, a Unit Owner or its or their Permitted Users) shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs (and including fees incurred in bankruptcy or probate proceedings, if applicable, and through any applicable appeals).
- 9.3 Fines. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Shared Facilities Manager, a fine or fines may be imposed upon an Owner for failure of an Owner, a Unit Owner or their respective Tenants and/or other Permitted Users to comply with any covenant, restriction, rule or regulation applicable to the Project Facilities, if such failure continues for a period in excess of five (5) business days after giving notice thereof to such Owner. In such event, the Shared Facilities Manager may impose a fine, relating back to the initial date of the breach, in the amount of \$250.00/day from the initial occurrence of the breach for the first breach and \$500.00/day from the initial occurrence of the subsequent breach for each subsequent breach; subject, however, to (and in all cases not to exceed) the maximum limits permitted by law from time to time. Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties. Fines shall be treated as an Assessment subject to the provisions for the collection of Assessments, and the lien securing same, as set forth herein. All monies received from fines shall be allocated as directed by the Shared Facilities Manager. The foregoing fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Shared Facilities Manager may be otherwise entitled under this Declaration, at law or in equity; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Shared Facilities Manager may otherwise be entitled to recover under applicable Legal Requirements from such Owner.

9.4 Remedies Cumulative. The rights and remedies set forth in this Article are in addition to any and all rights and remedies available at law, in equity and/or permitted under any other provision of this Declaration, all of which are intended to be, and shall be, cumulative.

10. **MORTGAGEE PROTECTION**

10.1 Mortgagee Protection. The following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

- (a) Shared Facilities Manager shall be required to make available to all Owners and the holder of any mortgage (a "Mortgage") on any Element, and to insurers and guarantors of any such Mortgage, for inspection, upon written request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments).
- (b) Any holder, insurer or guarantor of a Mortgage on an Element shall be entitled, upon written request, to receive notice from Shared Facilities Manager of (i) an alleged material default by the Owner of such Element in the performance of such Owner's obligations under this Declaration, including without limitation the failure to pay Assessments on such mortgaged Element, which default is not cured within sixty (60) days after Shared Facilities Manager has actual knowledge of such default, (ii) any condemnation or casualty loss affecting a substantial portion of the Shared Facilities, (iii) the occurrence of a lapse, cancellation or substantial modification of any insurance policy or fidelity bond maintained by Shared Facilities Manager, and (iv) any proposed action which requires the consent of a specified number of Mortgage holders, if any.
- (c) Any holder, insurer or guarantor of a Mortgage on an Element shall have the right (but not the obligation) to pay Assessments and/or other charges that are delinquent and have resulted or may result in a lien against any portion of such Element and receive reimbursement from its mortgagor.
- (d) Subject to the terms of the applicable Mortgage and related documents (and to the extent permitted by Legal Requirements), any holder, insurer or guarantor of a Mortgage on an Element that is a Taxed Element shall have the right (but not the obligation) to pay the portion of Taxes and/or other Tax-related costs allocated to such Element and/or the other Taxes that are delinquent and have resulted or may result in a lien against such Element and, in any such case, receive reimbursement from its mortgagor and/or the Owners of the other

Taxed Elements (as applicable) to the extent any of such parties fail to pay same as and when required herein.

- (e) Subject to the terms of the applicable Mortgage and related documents (and to the extent permitted by Legal Requirements), any holder, insurer or guarantor of a Mortgage on an Element shall have the right (but not the obligation) to procure the insurance required of the Owner of such Element under this Declaration and to perform such Owner's maintenance and other obligations hereunder, and to receive reimbursement of costs incurred in connection therewith from its mortgagor.
- (f) Any holder, insurer or guarantor of a Mortgage on an Element shall be entitled, upon written request, to estoppel certificates as contemplated by Section 15.10.
- (g) Each Owner of a Burdened Element agrees to cooperate with any reasonable requests for notice from any holder, insurer or guarantor of a Mortgage on a Benefitted Element with respect to the Element Exclusive Facilities located in such Burdened Element and serving such Benefitted Element, provided that such requests (for notice or otherwise) are comparable to the notices and information required to be provided by Shared Facilities Manager under the foregoing provisions.

Nothing contained herein shall limit or restrict the rights and remedies of Shared Facilities Manager under this Declaration in the event of a default by any Owner, Unit Owner or Element Specific Manager.

11. **INSURANCE ON SHARED FACILITIES AND ELEMENTS**

11.1 **Insurance.** Insurance obtained pursuant to the requirements of this Article 11 shall be governed by the provisions set forth in this Article.

11.2 **Purchase, Custody and Payment.**

- (a) **Purchase.** All insurance policies required to be obtained by Shared Facilities Manager hereunder shall be issued by an insurance company authorized to do business in Florida or by surplus lines carriers offering policies for properties in Florida, and shall be rated in the latest edition of *Best's Insurance Guide* (or its successor, and if such guide becomes unavailable, then a comparable rating guide selected by Shared Facilities Manager) not less than A-:VIII (or its reasonable equivalent). Said policies must otherwise satisfy the requirements of the mortgage held by Declarant's Mortgagee on the date hereof as well as the ongoing insurance requirements under the Project Encumbrances that are

the responsibility of the Shared Facilities Element Owner or Shared Facilities Manager pursuant to the terms thereof or this Declaration.

- (b) Named Insured. The named insured under the property insurance policies to be maintained by Shared Facilities Manager shall be Shared Facilities Manager, (i) individually (or such designee as may be designated by Shared Facilities Manager), (ii) as agent for the Owners of the Elements covered by the policies, without naming them, and (iii) as agent for the holders of any mortgage on an Element, without naming them, except as otherwise provided herein. The Owners and the holders of any mortgage on any Element (if required by the holder thereof) shall be deemed additional insureds with respect to all liability policies maintained by Shared Facilities Manager. Notwithstanding anything to the contrary contained herein, Declarant's Mortgagee shall be named an additional insured on all liability policies and a loss payee on all property insurance (including windstorm and flood) policies maintained by Shared Facilities Manager. The foregoing shall not, however, preclude the inclusion by Shared Facilities Manager of others as additional insureds.
- (c) Custody of Policies and Payment of Proceeds. All policies obtained by Shared Facilities Manager pursuant to this Article 11 shall provide that payments for losses made by the insurer shall be paid to Shared Facilities Manager and Declarant's Mortgagee (if required by Declarant's Mortgagee), as their interests may appear.
- (d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the insurer upon request by the policy holder to the holders of any mortgage on an Element or a Unit. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (e) Personal Property and Liability. Except as specifically provided herein, Shared Facilities Manager shall not be responsible to Owners to obtain insurance coverage upon the property lying within the boundaries of their respective Elements, including, but not limited to, any Owner's personal property, nor insurance for any Owners' personal liability and expenses, nor for any other risks not otherwise required to be insured in accordance herewith.

11.3 Coverage. Shared Facilities Manager shall maintain insurance covering the following:

- (a) Property. The Shared Facilities, together with all fixtures, building service equipment, personal property and supplies constituting the Shared Facilities (collectively the "Insured Property"), shall be insured for the full replacement value thereof to the extent commercially practicable and available at commercially reasonable rates, subject to industry standard exclusions and excluding foundation and excavation costs; provided, however, that Windstorm, Flood, Earthquake and other insurance for extraordinary hazards shall be subject to customary sublimits that are less than full replacement value as may be determined from time to time by the Shared Facilities Manager. The Insured Property shall not include, and shall specifically exclude, any portions of The Properties which are not part of the Shared Facilities, and all furniture, furnishings, floor coverings, wall coverings, ceiling coverings and other interior build-out of the Elements, other personal property owned, supplied or installed by Owners, Tenants or Permitted Users, and all electrical fixtures, appliances, air conditioner and heating equipment and water heaters to the extent not part of the Shared Facilities. Such policies may contain reasonable deductible provisions as determined by Shared Facilities Manager. Such coverage shall afford protection against loss or damage by fire and other hazards covered by an "all-risk" policy form, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief, subject in all cases to industry standard exclusions.
- (b) Liability. Commercial general liability and automobile liability insurance covering loss or damage resulting from any legal liability related to the Insured Property, with such coverage as shall be required by the Shared Facilities Manager.
- (c) Worker's Compensation. Worker's Compensation and other mandatory insurance, when applicable, to the extent applicable to the maintenance, operation, repair or replacement of the Shared Facilities.
- (d) Windstorm and Flood Insurance. Windstorm and Flood Insurance covering the Insured Property, if so determined by the Shared Facilities Manager, in such amounts (and containing such deductibles) as the Shared Facilities Manager may determine from time to time, subject to industry standard exclusions.
- (e) Project Encumbrances. Any and all insurance required of the Declarant, Shared Facilities Manager or its or their affiliates pursuant to the Project Encumbrances.

- (f) Other Insurance. Such other or greater insurance as is required by the mortgage held by Declarant's Mortgagee as of the date hereof, as well as such other insurance as the Shared Facilities Manager shall determine from time to time to be desirable in connection with the Shared Facilities.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against Shared Facilities Manager and against the Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk (and the amount of the insurer's liability under such policies shall not be reduced by the existence of any other insurance), and (iii) avoid liability for a loss that is caused by an act of the Shared Facilities Manager or one or more Owners (or any of its or their respective employees, contractors and/or agents) or as a result of contractual undertakings. Additionally, each policy shall provide that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Shared Facilities Manager.

- 11.4 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the express named insureds, including their respective mortgagees, provided that only ten (10) days' prior written notice shall be required for cancellation due to nonpayment of premium. Prior to obtaining any policy of property insurance or any renewal thereof, the Shared Facilities Manager may (and, not less than once every thirty-six (36) months, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the applicable Insured Property (exclusive of foundations and excavation costs), without deduction for depreciation, and recommendations from its insurance consultant as to limits/sublimits for such coverage, for the purpose of determining the amount of insurance to be effected pursuant to this Article. Notwithstanding anything contained herein to the contrary, the insurance coverage required of the Shared Facilities Manager pursuant to this Article 11 may be provided through (i) subject to the agreement of the Shared Facilities Manager, with respect to property insurance only, a master policy that covers the Insured Property and property insurance required of the Owners (or any one of them) under this Declaration, provided that the cost of such master policy shall be allocated by the Shared Facilities Manager, with the assistance of Shared Facilities Manager's insurance consultant, between the coverage required of Shared Facilities Manager hereunder and such other coverage of the other Owners, and/or (ii) at Shared Facilities Manager's option, a blanket policy that covers the property and liability insurance set forth above as well as other insurance coverage benefitting Shared Facilities Manager's affiliates, provided that the cost of such blanket policy shall be allocated by the Shared Facilities Manager, with the assistance of Shared Facilities

Manager's insurance consultant, between the coverage required of Shared Facilities Manager hereunder and such other coverage of its affiliates.

- 11.5 Premiums. Premiums upon insurance policies purchased by the Shared Facilities Manager pursuant to this Article 11 shall be allocated among the Owners in accordance with this Section 11.5 and included among Assessments under this Declaration. Such premiums shall be allocated among and assessed against the Owners (excluding the Shared Facilities Element Owner) by the Shared Facilities Manager, with the assistance of Shared Facilities Manager's insurance consultant, at Shared Facilities Manager's option, based on the relative replacement value that each Owner's Element bears to the total replacement value of all of the Elements (excluding the Shared Facilities Element) or the square footage of the Elements (excluding the Shared Facilities Element) or based on each Element's share of Shared Facilities Costs or a combination thereof, depending on the type of insurance in question. To the extent separate invoices are issued for premiums associated with the Shared Facilities Manager's insurance policies hereunder with respect to any of the Elements, such invoices shall be deemed dispositive and the Owners of such Elements shall be responsible for the portion of the premium reflected in the invoices applicable to it, with the remaining premiums (if any) to be allocated among the remaining Elements not separately invoiced (excluding the Shared Facilities Element), at Shared Facilities Manager's option, consistent with the allocation methods provided above depending on the type of insurance. Any separate invoice for the Shared Facilities Element's share of premiums shall also be allocated among all of the other Elements, at Shared Facilities Manager's option, based on the allocation methods provided above depending on the type of insurance. Premiums may be financed in such manner as the Shared Facilities Manager deems appropriate. Without limiting the terms of this Declaration, Shared Facilities Costs may include, from time to time and at any time, such amounts deemed necessary by Shared Facilities Manager to provide Shared Facilities Manager with sufficient funds to pay insurance premiums at least thirty (30) days before the date the same are due.
- 11.6 Share of Proceeds. All property insurance policies obtained by or on behalf of the Shared Facilities Manager pursuant to this Article 11 shall be for the benefit of the Shared Facilities Manager, the Owners and the holders of any mortgage on an Element, as their respective interests may appear. The duty of the Shared Facilities Manager shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners and the holders of any mortgage on the subject Element(s) (or any leasehold interest therein).
- 11.7 Distribution of Proceeds. Proceeds of property insurance policies required to be maintained by the Shared Facilities Manager pursuant to this Article 11 shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the Owners, with remittances to Element Owners and their mortgagees being payable jointly to them. Such proceeds shall be allocated in the same manner as the proceeds are allocated in subsection 11.7(b).
- (b) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the Owners in proportion to the amount of loss suffered by the Elements; provided, however, that if the damage suffered affects fewer than all Owners, the percentage shares shall be pro rata allocated over only those Owners suffering damage from the applicable policies and proceeds in proportion to the amount of loss suffered by each affected Element Owner (the "Allocated Interests"), and distributed first to the holders of any mortgage on an insured Element in amounts sufficient to pay off their mortgages, as their interests may appear, and the balance, if any, to the applicable Owner(s).
- 11.8 Shared Facilities Manager as Agent. The Shared Facilities Manager is hereby irrevocably appointed as the exclusive agent and attorney-in-fact for Shared Facilities Manager and each Owner and for each owner of a mortgage or other lien upon an Element and for each owner of any other interest in The Properties, subject to the terms of any mortgage held by Declarant's Mortgagee, to manage and coordinate the adjustment and settlement of all claims arising under property insurance policies purchased by the Shared Facilities Manager and the execution and delivery of releases upon the payment of claims, in each case in conjunction with Shared Facilities Manager's insurance and other consultants.
- 11.9 Owners' Personal Coverage. The insurance required to be purchased by the Shared Facilities Manager pursuant to this Article 11 shall not cover claims against an Owner due to occurrences occurring within its Element, nor casualty or theft loss to the contents of or improvements to an Owner's Element. It shall be the obligation of the individual Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance required to be carried by the Shared Facilities Manager hereunder, provided that each Owner shall, at a minimum, obtain and maintain, or cause to be obtained and maintained, at such Owner's sole expense, the following insurance coverage:
- (a) Property. Property insurance for fire and other hazards on an "all-risk" basis for the replacement value of the improvements within the Element owned by it, on

industry standard forms affording customary coverage, subject to industry standard exclusions, customary deductibles and customary limits/sublimits, typically maintained by owners and required by mortgagees of similar properties in the geographical region.

- (b) Liability. Commercial general liability insurance written on an "occurrence basis" (rather than a "claims basis") under which policy each Owner, Declarant and the Shared Facilities Manager shall be named as an additional insured, on industry standard forms affording customary coverage, subject to industry standard exclusions, customary deductibles and customary limits/sublimits, typically maintained by owners and required by mortgagees of similar properties in the geographical region, but in no event less than \$1,000,000 for each occurrence of injury or property damage and \$3,000,000 in the aggregate.
- (c) Umbrella Liability. Umbrella or excess following form of insurance policy meeting the requirements of, but providing coverage in excess of, the policy in item (b) above with a limit of not less than \$10,000,000 per occurrence and in the aggregate.
- (d) Worker's Compensation. Worker's Compensation and other mandatory insurance, when applicable, covering all persons employed by such Owner in connection with any work done on or about the Element (or any part thereof) in such amounts and to the extent required by Legal Requirements.
- (e) Project Encumbrances. Any and all insurance required of such Owner pursuant to the Project Encumbrances that encumber its Element, unless such insurance is being maintained by Shared Facilities Manager.
- (f) Other Insurance. Such other or greater insurance as is typically maintained by owners and required by mortgagees of similar properties in the geographical region.

The amounts and types of insurance required herein shall be adjusted from time to time as necessary to comply with the foregoing requirements and/or the requirements of Declarant's Mortgagee. All insurance required of or maintained by an Owner under this Article shall be procured from companies authorized to do business in the State of Florida and shall be rated in the latest edition of *Best's Insurance Guide* (or its successor, and if such guide becomes unavailable, then a comparable rating guide selected by Shared Facilities Manager) not less than A-:VIII (or such other rating as may be approved by Shared Facilities Manager). The insurance coverage required of each Owner pursuant to this Article may be provided through the coverage of (x) subject to the consent and agreement of the Shared Facilities Manager, a master policy carried by the

Shared Facilities Manager as and to the extent contemplated under Section 11.4 hereof, and/or (y) a blanket policy carried by it, provided that the coverage afforded shall not be reduced by reason of the use of such blanket policy and provided that the requirements set forth herein are otherwise satisfied. In addition, two or more Owners may mutually agree to maintain a single policy or policies for their respective Elements and interests (rather than separate and independent policies), provided that the requirements set forth herein are otherwise satisfied. Each Owner shall furnish to Shared Facilities Manager, upon the recordation of this Declaration and thereafter prior to the expiration of each policy, certificates of insurance (and, if requested, copies of policies), evidencing that the insurance required hereunder is in full force and effect. The Element Specific Manager shall be responsible for obtaining and maintaining the foregoing insurance following submission of any Element to an Element Specific Declaration. The amount of insurance required hereunder shall not be construed to be a limitation of liability on the part of any Owner or Unit Owner or their respective Permitted Users.

All such policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to Shared Facilities Manager and the named insureds, including their respective mortgagees, provided that only ten (10) days' prior written notice shall be required for cancellation due to nonpayment of premium. All such policies shall further provide that the coverage afforded the additional insureds is on a primary and non-contributory basis with any other insurance available to the additional insureds, and if the additional insureds have other insurance that is applicable to the loss, such other insurance will be on an excess basis or contingent basis. When appropriate and obtainable, each Owner's insurance policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against Shared Facilities Manager and against the other Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk (and the amount of the insurer's liability under such policies shall not be reduced by the existence of any other insurance), and (iii) avoid liability for a loss that is caused by an act of such Owner, Shared Facilities Manager or any other Owner (or any of its or their respective employees, contractors and/or agents) or as a result of contractual undertakings. In the event of any question or dispute as to whether any Owner's insurance policy complies with the requirements of this Article, such question or dispute shall be submitted to Shared Facilities Manager, who, with the assistance of its insurance consultant, shall render a decision, which decision shall be dispositive of such question or dispute.

Notwithstanding anything contained to the contrary herein, while Shared Facilities Manager shall use reasonable efforts to maintain copies of the insurance certificates and/or policies received by it, Shared Facilities Manager shall have no obligation to request and/or maintain same, nor shall Shared Facilities Manager have any obligation to take any affirmative action in the event that an Owner (including any Element Specific

Manager) fails to maintain adequate insurance or any insurance specifically required hereunder, including without limitation binding policies on behalf of such Owner (or Element Specific Manager, as applicable) or taking any other ordinary or extraordinary measures. Each Owner, by acceptance of a deed or other conveyance of an Element, holds Shared Facilities Manager and Declarant harmless and agrees to indemnify Shared Facilities Manager and Declarant from and against any and all claims made by any other Owner, any Unit Owner and its or their Permitted Users, on account of any property damage, personal injury and/or any other Losses of any kind or nature, including without limitation any and all costs and expenses associated with such claims, including inconvenience, relocation and/or moving expenses, lost time, business opportunities or profits, and attorneys' fees and other legal and associated expenses (through and including all appellate proceedings), arising out of, related to, caused by, associated with or resulting from the failure of such Owner (including any Element Specific Manager's) to maintain adequate insurance or the insurance coverages required to be maintained by an Owner pursuant to this Section 11.9.

Each Owner hereby waives any and all claims and rights of action it may have against Declarant, Shared Facilities Manager and the other Owners, and their respective directors, officers, employees, contractors, agents or affiliates, with respect to any Losses arising out of any damage to its Element covered by property insurance required under this Section 11.9, whether or not such insurance was actually in effect, and whether or not such damage was caused by the negligence or other act or omission of Declarant, Shared Facilities Manager, the other Owners or their respective directors, officers, employees, contractors, agents or affiliates.

Given that the systems, equipment and facilities (including without limitation elevator cabs, cables, machinery and equipment; HVAC systems; wires cables generators and other apparatus used in the delivery of the utility services, etc.) located in Element Exclusive Facilities are the property of the Owner of the Benefitted Element, such Owner, if it so desires, shall purchase and pay for insurance as to all such property, and the Owner of the Burdened Element shall have no obligation to maintain or pay for same.

11.10 Benefit of Mortgagees. Certain provisions in this Article 11 are for the benefit of mortgagees of Elements and may be enforced by such mortgagees.

12. RECONSTRUCTION OR REPAIR OF SHARED FACILITIES

12.1 Application of Provisions. The procedures stated in this Article 12 apply to damage to or destruction of the Insured Property and do not apply to the repair or restoration of improvements within any Element or Element Exclusive Facilities. Each Owner shall be solely responsible for repairing or rebuilding the improvements within its Element and

any Element Exclusive Facilities. Each Owner may determine in its discretion whether to rebuild the improvements within its Element or Element Exclusive Facilities, but such Owner shall complete those repairs that the Shared Facilities Manager deems reasonably necessary to avoid further damage to the Insured Property or Element improvements that are a part of or serve any other Element, or substantial diminution in value of such other Elements, and to protect the Owners from liability from the condition of any of the improvements on The Properties. Any reconstruction or repair by any Element Owner following a fire or other casualty of any kind or nature (including without limitation the reconstruction or repair of Element Exclusive Facilities) shall be subject to and performed in accordance with the requirements of Article 5.

- 12.2 Determination to Reconstruct or Repair. In the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Shared Facilities Manager shall determine whether or not to repair and/or restore the Insured Property, and if a determination is made to effect restoration, the Shared Facilities Manager shall disburse the proceeds of all property insurance policies required to be maintained by or payable to it under Article 11 to the contractors engaged in such repair and restoration in appropriate progress payments. Notwithstanding the foregoing, in the event insurance proceeds are "sufficient" to repair or restore any Insured Property damaged or destroyed, the Shared Facilities Manager shall be required to effect such repair or restoration. For purposes of the preceding sentence, such proceeds shall be deemed "sufficient" if either (i) the insurance proceeds available under any applicable policies are within **\$ __,000,000** of the total amount needed to effect such repairs or restoration, or (ii) if the total amount needed to effect the repairs or restoration is more than **\$ __,000,000** above the insurance proceeds available under any applicable policies, and an Element Owner (or combination of Element Owners) elects to contribute the deficit in the repair funds for the use of the Shared Facilities Manager to effect the repair or restoration.²

Subject to the preceding paragraph, in the event the Shared Facilities Manager determines not to effect restoration to the Shared Facilities, the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Owners benefited by the insurance maintained by the Shared Facilities Manager as set forth in subsection 11.7(b); provided, however, that no payment shall be made to an Owner until all mortgages and liens on the Owner's Element have first been paid off, from the Owner's share of such fund, in the order of priority of such mortgages and liens.

- 12.3 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and then

² Client: Please advise as to amounts.

applicable building, zoning and other codes; or if not, then in accordance with the plans and specifications approved by the Shared Facilities Manager.

- 12.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Shared Facilities Manager, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Owners benefited by the insurance policy providing the proceeds for reconstruction by the Shared Facilities Manager (which shall be deemed to be Assessments made in accordance with, and secured by the lien rights contained in, Article 15) in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective Allocated Interests.
- 12.5 Reconstruction or Repair by Element Owners. Notwithstanding anything herein to the contrary, Shared Facilities Manager may delegate responsibility for repair and/or reconstruction of portions of the Insured Property to the Owner thereof (e.g., the Structure of an Element), in which event Shared Facilities Manager shall disburse the proceeds of the property insurance policies covering such Insured Property to each such Element Owner, its contractors engaged in such repair and restoration and/or both jointly, as may be determined by Shared Facilities Manager, to the extent proceeds are available for such purpose. In the event that more than one Element Owner is responsible for repair or restoration of the Insured Property following damage or destruction, all such Owners shall cooperate with each other and with Shared Facilities Manager, and work in good faith, for the common goal of constructing and completing all such repairs and restoration on a timely basis and in accordance with the Project Standard. Any reconstruction or repair by any Element Owner following a fire or other casualty of any kind or nature (including without limitation the reconstruction or repair of the Insured Property owned by it pursuant to this Section, interior improvements to its Element, Element Exclusive Facilities or otherwise) shall be subject to and performed in accordance with the requirements of Article 5.
- 12.6 Benefit of Mortgagees. Certain provisions in this Article 12 are for the benefit of mortgagees of Elements and may be enforced by any of them.

13. **CONDEMNATION**

- 13.1 Effect of Taking. The taking of portions of the Shared Facilities by the exercise of the power of eminent domain shall be deemed to be a casualty, and, subject to the terms of this Declaration, the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Shared Facilities Manager; and in the event of failure to do so, in the discretion of Shared Facilities Manager, a charge shall be made against a defaulting Owner in the amount of such Owner's award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 13.2 Determination Whether to Reconstruct. The effect of the taking shall be addressed in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty and the provisions of Article 12 shall apply as though fully set forth herein (including without limitation the provisions thereof relating to disbursements of excess proceeds and Assessments for deficits in proceeds), provided that any decision to reconstruct or repair shall be to restore the affected improvements to the nearest whole architectural structure taking into consideration the nature and extent of the condemnation.

14. **PROPERTY TAXES**

- 14.1 Separate Assessment. Each Element Owner shall cooperate with Shared Facilities Manager in efforts to have the County Property Appraiser issue separate Tax folio numbers to each of the Elements within The Properties. Since The Properties consist of multiple parcel buildings containing separate ownership parcels that are vertically located, in whole or in part, over and include a portion of the common land, the value of the land underlying the Elements shall be allocated to and included in each Element (excluding the Shared Facilities Element) in the same proportion that the assessed value of the improvements comprising each Element (other than the Shared Facilities Element) bears to the total assessed value of all improvements comprising all of the Elements (excluding the Shared Facilities Element) in Three Hundred Alton, as determined by the County Property Appraiser, unless a different method of valuing the land underlying the Elements in a project consisting of multiple parcel buildings is required by Legal Requirements (in which case, such method shall be followed). To the extent that separate Tax folios are created for each of the Elements, each Owner shall be solely responsible for payment of the Tax bill issued with respect to its Element. If a separate Tax folio number is created for the Shared Facilities Element, Taxes assessed against the Shared Facilities Element shall be handled and paid for as provided in Section 14.5. If the Tax folio number for any Element erroneously includes portions of

another Element, the Owners of such Elements shall work cooperatively and in good faith to correct such error with the County Property Appraiser.

14.2 No Separate Assessment. In the event that separate Tax folios are not established for each of the Elements, but rather any Element is included and taxed as part of another Element (such Elements herein referred to as the "Taxed Elements"), then the Tax values of each Taxed Element shall be determined in accordance with the following:

- (a) Within ten (10) business days of any Element Owner's receipt of the real estate Tax bill for its Element that includes one or more other Elements, such Owner shall endeavor to give notice to Shared Facilities Manager and the other Owners of the Taxed Elements, together with a copy of the Tax bill. While each Element Owner of a Taxed Element shall endeavor to provide such notice to the Shared Facilities Manager and the other Owners of the Taxed Elements, the failure to do so shall not be a default hereunder since each Element Owner has the ability to obtain a copy of the applicable Tax bill through the County Property Appraiser's office. Under no circumstances shall Shared Facilities Manager be obligated to determine whether any Elements are Taxed Elements; it being agreed that the obligations of Shared Facilities Manager under this Section 14.2 shall arise if, and only if, an Element Owner provides Shared Facilities Manager with a copy of the Tax bill that includes more than one Element. Following receipt of such Tax bill, Shared Facilities Manager shall engage a Florida licensed and MAI certified real estate appraiser or qualified tax consultant (herein, the "tax consultant") having at least ten (10) years' experience in real estate Tax protest work in the County to appraise the Taxed Elements as hereinafter provided.
- (b) The tax consultant shall be engaged by Shared Facilities Manager to value each of the Elements included in the Taxed Elements using the criteria that the County Property Appraiser is eligible to use under the Florida Statutes in determining ad valorem Tax values (and, if more than one method of valuation is available, the tax consultant shall select the method to be applied, in its reasonable discretion), and shall allocate the value of the Taxed Elements, as disclosed in the applicable Tax bill, among the individual Elements included in the Taxed Elements. The tax consultant shall be directed to deliver a report to Shared Facilities Manager indicating the allocation of value among the Elements included in the Taxed Elements and calculating (and setting forth) the percentage that each such valuation bears to the total value of the Taxed Elements, as disclosed in the Tax bill (each such percentage being the "Tax Value Percentage Share"), together with an invoice showing the tax consultant's fees and expenses. The land value associated with the Taxed Elements shall be allocated based on the value of each Taxed Element relative to the value of all

Taxed Elements, as determined by the tax consultant. Each Owner shall, within ten (10) business days following Shared Facilities Manager's notice of such determination by the tax consultant, (i) remit to the County Tax Collector its portion of the Tax bill based on the Tax Value Percentage Share multiplied by the total Taxes then due for the Taxed Elements under the Tax bill, (ii) provide to Shared Facilities Manager and the other Taxed Element Owners evidence of such payment, and (iii) pay to Shared Facilities Manager its portion of the tax consultant's fee and expenses based on the Tax Value Percentage Share multiplied by the total tax consultant's fees and expenses. Shared Facilities Manager shall not have any liability for any failure of the Taxed Elements Owners to receive the benefit of discounts associated with the early payment of real estate Taxes or penalties, interest or other charges that may accrue on Taxes for the Taxed Elements due to the foregoing valuation process or otherwise, all of which shall be shared among the Taxed Element Owners based on the same allocation as the Tax Value Percentage Share provided herein; provided, however, that any loss of discounts, penalties, interest or other charges resulting from any Taxed Element Owner's failure to pay or perform its obligations when required hereunder shall be borne solely by such defaulting Taxed Element Owner.

- (c) As soon as reasonably possible (but in any event no later than five (5) business days) following any Element Owner's receipt of the TRIM notice from the taxing authority for its Element that includes one or more other Elements, such Owner shall endeavor to give notice to Shared Facilities Manager and the other Owners of the Taxed Elements. While each Element Owner of a Taxed Element shall endeavor to provide such notice to the Shared Facilities Manager and the other Owners of the Taxed Elements, the failure to do so shall not be a default hereunder since each Element Owner has the ability to obtain a copy of the applicable TRIM notice through the County Property Appraiser's office. The Owners of the Taxed Elements shall reasonably cooperate with each other and work in good faith to enable the timely protest of the valuation of the Taxed Element if any Taxed Element Owner desires to protest same, provided that the costs shall be paid initially by the Owner(s) electing to pursue the protest, but deducted from any refund of Taxes as hereinafter provided. In the event that any Taxed Element Owner(s) file a timely protest of the valuation of the Taxed Element as disclosed in the TRIM notice prior to issuance of the Tax bill, the Taxed Element Owners and Shared Facilities Manager shall still undertake the valuation procedure outlined above without delay, and in the event of any refund of Taxes based on the Tax protest, such amount shall be shared among the Owners of the Taxed Elements based on the same allocation as the Tax Value Percentage Share provided for above, after deducting the reasonable costs of the protest.

- (d) Notwithstanding the foregoing, the Taxed Element Owners (or any of them) shall have the right to request a "split" or "cutout" of its respective Taxed Element from the other Taxed Elements pursuant to Section 197.373 of the Florida Statutes (or any successor or other provision), as amended, or any rules promulgated with respect to same, and to obtain a separate Tax value and assessment for each such Taxed Element. Any Taxed Element Owner so requesting a split or cutout of its Taxed Element shall provide a copy of such request to Shared Facilities Manager and the other Taxed Element Owners simultaneously with the delivery of same to the County Tax Collector. If any Taxed Element Owner is successful in obtaining from the County Tax Collector and/or Property Appraiser the amount of the assessment on its Taxed Element, such Taxed Element Owner shall notify the Shared Facilities Manager and the Owners of the other Taxed Elements. The determination by the County Property Appraiser shall be conclusive with respect to the Tax value and assessment for the Taxed Element in question absent manifest error (notwithstanding any different determination or valuation by a tax consultant), and the Taxed Element Owners shall be entitled to pay Taxes for their respective Taxed Element based on such determination. Should any Taxed Element Owner successfully obtain from the County Tax Collector and/or Property Appraiser separate Tax values and/or assessments for one or more Taxed Elements, the Taxed Element Owners shall thereafter pursue a determination of the Tax values and assessments for each of the Taxed Elements under this subsection 14.2(d) prior to Shared Facilities Manager commencing the allocation procedures through the tax consultant set forth above, unless Shared Facilities Manager reasonably determines that separate allocation of values and/or assessments from the Property Appraiser for two or more of the Taxed Elements may be necessary.

- 14.3 Reference to Taxes in Other Documents. For purposes of this Declaration and any documents or instruments, such as leases and Element Specific Declarations, referring to the allocation of Taxes (or any component thereof) pursuant to this Declaration, Taxes allocated to a portion of The Properties shall mean those Taxes assessed and payable with respect to each Element as if each such Element are or were separately assessed and taxed, and if at any time there are no separate assessments, Taxes shall be allocated pursuant to the allocations and in the manner set forth in Section 14.2. Notwithstanding anything to the contrary contained in this Declaration, except for Taxes assessed against the Shared Facilities Element, Taxes assessed against or relating to any Element (whether through separate Tax folio numbers or the allocations set forth herein) shall not be included in the Shared Facilities Costs, and each Owner shall be obligated to pay such Taxes with respect to its Element without contribution from any other Owner. For the avoidance of doubt, Taxes associated with Element Exclusive Facilities shall be paid by the Owner of the Burdened Element in which such facilities are

located, unless there is a separate Tax bill for such Element Exclusive Facilities and/or the property located therein, in which case the Owner of the Benefitted Element served by such facilities shall pay same.

- 14.4 Failure to Pay Taxes. If an Owner shall fail to pay any portion of the Taxes or any other charge levied against that Owner's Element prior to the date such Taxes become delinquent, which such Owner is obligated to pay pursuant to this Article 14, and if such unpaid Taxes are a lien or encumbrance on any portion of The Properties not owned by the delinquent Owner and/or on any Project Facilities serving any other Element, and any lawful authority would thereafter have the right to sell Tax certificate(s) or issue Tax warrants or deed(s) or otherwise foreclose against such portion of The Properties, or to impair or extinguish any easement benefitting any Owner by reason of such nonpayment, then any affected Owner shall (a) have the right (but not the obligation), upon the expiration of ten (10) days after notice of non-payment to the defaulting Owner (or such shorter period of time, but not less than three (3) days, if such Taxes have become delinquent), to pay such Taxes, or share thereof, together with any interest and penalties thereon, whereupon the Owner obligated to make such payment shall, upon demand, reimburse such affected Owner who made such payment for the amount thereof, and/or (b) to pursue any and all rights and remedies available at law or in equity against the delinquent Owner failing to make such payment. Interest shall accrue on the amount of any such reimbursement obligation not paid within ten (10) days after demand at the Default Rate.
- 14.5 Taxes Against Shared Facilities. It is intended that any and all Taxes against the Shared Facilities Element or Shared Facilities shall be (or have been, because the purchase prices of the Elements and Structures have already taken into account the value of the Shared Facilities), assessed against and payable as part of the Taxes of the applicable Elements within The Properties. However, in the event that, notwithstanding the foregoing, any such Taxes are assessed directly against the Shared Facilities Element or Shared Facilities, Shared Facilities Manager shall have the exclusive right to protest or appeal same, including Taxes on any improvements and any personal property located thereon. In such event, all such Taxes (and any costs of any protest or appeal thereof) shall be included as part of the expenses of the Shared Facilities which are assessed by Shared Facilities Manager (in part, for the benefit of the Shared Facilities Element Owner) against each of the Elements and shall be shared among the Elements (excluding the Shared Facilities Element) based on the assessed or appraised value of each Element (other than the Shared Facilities Element) relative to the total assessed or appraised value of all Elements (excluding the Shared Facilities Element), as determined by the County Property Appraiser (with respect to Elements that have separate Tax folio numbers or assessed values) and/or a tax consultant selected by Shared Facilities Manager in accordance with the valuation process set forth above (with respect to Elements which are not separately assessed). Further, if Taxes are assessed directly

against the Shared Facilities Element or Shared Facilities, without limiting the terms of this Declaration, Shared Facilities Costs may include such amounts deemed necessary by Shared Facilities Manager to provide it with sufficient funds to pay such Taxes at least thirty (30) days before the date the same are due.

15. **PROVISIONS REGARDING SHARED FACILITIES COSTS**

15.1 **Maintenance Expenses.** Shared Facilities Manager shall maintain in good repair, and shall replace as often as necessary, the Shared Facilities as provided in other provisions of this Declaration, all such work to be done as determined and ordered by Shared Facilities Manager. Each Owner, by acceptance of a deed or other conveyance of any portion of The Properties, shall be deemed to have agreed that the level of service and quality of maintenance and repair shall be commensurate, in the opinion of Shared Facilities Manager, with the Project Standard. All work by Shared Facilities Manager pursuant to this Article and pursuant to Article 6 related to the foregoing and/or with respect to the Shared Facilities shall be paid for through Assessments (either general or special) imposed in accordance herewith. In the event that any Element Owner requests Shared Facilities Manager to repair or replace any portions of that Owner's Element other than the Shared Facilities which would not otherwise fall under Shared Facilities Manager's responsibilities, then Shared Facilities Manager may do so as long as all costs and expenses thereof are paid by the applicable Element Owner. Likewise, any repair or other work to the Shared Facilities necessitated by the misuse, negligence or other action or inaction of an Owner or its Tenants or Permitted Users shall be paid for by the Owner causing the damage. No Owner may waive or otherwise escape liability for Assessments to Shared Facilities Manager by non-use (whether voluntary or involuntary) of the Shared Facilities or abandonment of the right to use same. Notwithstanding anything herein contained to the contrary, Shared Facilities Manager shall be excused and relieved from any and all maintenance, repair and/or replacement obligations under this Article to the extent that the funds necessary to perform same are not available through the Assessments imposed and actually collected. Shared Facilities Manager shall have no obligation to fund and/or advance any deficit or shortfall in funds needed by Shared Facilities Manager in order to properly perform the maintenance, repair and/or replacement obligations described herein.

15.2 **Ongoing Developer Obligations.** Without limiting the generality of the obligations of Shared Facilities Manager under the provisions of this Declaration, Shared Facilities Manager shall (a) assume or otherwise be responsible for Declarant's and its affiliates' ongoing responsibilities to the County and any other Governmental Authority with respect to The Properties as a whole or more than one Element thereof or the Shared Facilities, including without limitation such obligations of Declarant or its affiliates under the Project Encumbrances (except with respect to the obligations under the Project Encumbrances that are the responsibility of an Owner thereunder or under this

Declaration, which shall remain with the applicable Owner), and (b) indemnify and hold Declarant and its affiliates harmless with respect thereto in the event of Shared Facilities Manager's failure to fulfill those responsibilities. Any and all costs and/or expenses incurred by Shared Facilities Manager in assuming and/or performing any of such obligations shall be part of the Shared Facilities Costs assessed against all Element Owners (including Unit Owners) in the manner provided by this Article. In the event of doubt as to whether obligations under the Project Encumbrances (or any particular obligation thereunder) is the responsibility of Shared Facilities Manager or any Owner, the decision of Shared Facilities Manager in such regard shall be final and conclusive.

- 15.3 Assessment to Shared Facilities Manager; Allocations. Declarant (and each party joining in any Supplemental Declaration) hereby covenants and agrees, and each Owner of an Element (including, without limitation, a Unit Owner) or any portion thereof, by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to Shared Facilities Manager annual Assessments and charges for the operation and insurance of, and for payment of expenses (and real estate and personal property Taxes) allocated or assessed to or through or otherwise incurred by the Shared Facilities Element Owner or Shared Facilities Manager, of and/or for the ownership, maintenance, management, operation and insurance of the Shared Facilities, the establishment of reasonable reserves for the replacement of same, the establishment of a fund to pay legal costs and expenses of Shared Facilities Element Owner or Shared Facilities Manager, capital improvement Assessments, special Assessments and all other charges and Assessments hereinafter referred to or imposed by Shared Facilities Manager in connection with the repair, replacement, improvement, maintenance, management, operation and insurance of, and taxes on, the Shared Facilities (collectively, the "Shared Facilities Costs"), all such Assessments to be fixed, established and collected from time to time as herein provided. The Shared Facilities Costs shall also be deemed to include any and all costs and expenses (including rent) relating to or incurred by Shared Facilities Element Owner or Shared Facilities Manager under the Project Encumbrances, rent incurred by Shared Facilities Manager (whether directly or by reimbursement to third party managers) for property management offices located within or outside The Properties and used or occupied by Shared Facilities Manager or other property manager(s) providing services to the Shared Facilities, any and all costs and expenses (including without limitation reasonable attorneys' fees in all legal proceedings commenced by or against Shared Facilities Manager) incurred by Shared Facilities Manager in connection with the performance of its obligations under this Declaration, a management fee payable to Shared Facilities Manager (or its designee) not to exceed twelve and one-half percent (12.5%) of the other Shared Facilities Costs and, in connection with any construction performed by or under the supervision of Shared Facilities Manager, a construction oversight fee equal to five percent (5%) of the total cost of the work, provided that if such cost exceeds \$1,000,000 the construction

management fee shall be equal to three percent (3%) of such total costs to reimburse Shared Facilities Manager for such services. Without limiting the generality of the foregoing, Shared Facilities Costs may include the following: (a) to the extent applicable, any lease agreement and other payments required under lease agreements for artwork, sculptures, and/or art installations within the Shared Facilities, if same is leased by the Shared Facilities Manager rather than being owned by the Shared Facilities Manager; (b) to the extent the Shared Facilities Manager enters into any valet parking agreements for off-site parking services, the costs associated with same, (c) the costs and expenses of maintaining, repairing and/or replacing as necessary any public improvements (such as, without limitation, sidewalks, medians, landscaping, etc.) located upon or adjacent to (even if beyond the legal boundaries of) The Properties, if any, and/or any art, mural and/or other decorative feature of the Project, existing and/or to the extent required, maintained or imposed by any agreement, permit, approval or other instrument recorded against the Land or in connection with, or as a condition of obtaining, the permits and/or approvals for development and operation of The Project; (d) costs resulting from damage to The Properties or any portion thereof which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage; (e) if applicable, any costs in connection with the Shared Facilities Manager's obtaining any software and/or other technology for the integrated provision of services and/or access to the front desk, valet parking, concierge service, maintenance personnel, and/or any other shared facilities and/or shared services available to Owners within the Project; and (f) any ad valorem taxes assessed against Shared Facilities. The annual Assessment, capital improvement Assessment and special Assessment, together with such interest thereon and costs of collection thereof (including any costs of any collection agency) and costs of protecting the lien, shall be a charge on each Element, and shall be a continuing lien upon each Element and upon all improvements thereon, from time to time existing as herein provided. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of all persons who own any fee interest in any Element (or any portions thereof), at the time when the Assessment fell due and all subsequent Owners and fee owners and Unit Owners thereof until paid, except as provided in Section 15.6. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

Shared Facilities Costs allocable to the Shared Facilities shall be allocated among the Elements as follows, subject to reasonable adjustments by Shared Facilities Manager as hereinafter provided:

<u>Element</u>	<u>Share of Shared Facilities Costs</u>
<i>Residential Element</i>	<u> </u> %

Commercial Element	____%
Shared Facilities Element	0.00%
TOTAL	100%

The foregoing allocations shall be subject to reasonable adjustments by Shared Facilities Manager from time to time (based on, *inter alia*, relative or intensity of use of the Shared Facilities by the Owners and their respective Permitted Users, actual consumption or expense and/or other relevant factors), which adjustments shall be made by Supplemental Declaration executed by Shared Facilities Manager and the Declarant's Mortgagee, and otherwise joined into by all Owners. Notwithstanding the foregoing or the allocations set forth above, (a) to the extent any utility or other charges are part of the costs attributable to the Shared Facilities and those charges can reasonably be allocated to the particular Elements based upon actual consumption as determined by Shared Facilities Manager's engineer or consultant, then in such event, such utility or other charges shall be allocated based upon actual consumption, rather than by the percentage allocations described above, (b) premiums for insurance policies purchased by Shared Facilities Manager pursuant to this Declaration shall be allocated among the Elements as provided in Section 11.5, (c) if Taxes are assessed directly against the Shared Facilities Element or Shared Facilities (rather than being paid as part of the Taxes applicable to the other Elements), Taxes with respect to the Shared Facilities shall be allocated and assessed as provided in Section 14.5, (d) **[placeholder for other specific allocations]**, and (e) if, under any other provision of this Declaration, any other costs are allocated to the Element Owners (or any one or more of them) on a basis other than the manner set forth in this Section, then such costs shall be allocated by Shared Facilities Manager to such Element Owners as so provided in such other provisions. All such charges, premiums, Taxes and other costs nevertheless are and shall remain Assessments (irrespective of how same are allocated among the Elements), subject to Shared Facilities Manager rights and remedies set forth in this Article 15 in the event any Owner fails to pay same as required herein.

- 15.4 Levying Assessments. Shared Facilities Manager shall budget and adopt Assessments for Shared Facilities Manager's general expenses for the Shared Facilities Costs based, in part, upon Shared Facilities Manager's reasonable projections of the intensity of use of the applicable Shared Facilities for the period subject to the budget. In addition to the regular and capital improvement Assessments which are or may be levied hereunder, Shared Facilities Manager shall have the right to collect reasonable reserves for the replacement of the applicable Shared Facilities (or any components thereof) and to levy special Assessments to fund expenses which Shared Facilities Manager does not reasonably anticipate having sufficient funds to cover, or special Assessments or impose other charges against an Owner(s) to the exclusion of other Owners for the repair or

replacement of damage to any portion of the applicable Shared Facilities (including, without limitation, improvements and landscaping thereon) caused by the misuse, negligence or other action or inaction of an Owner or its Tenants or Permitted Users. Any such special Assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special Assessment levied hereunder shall be due within the time specified by Shared Facilities Manager in the action imposing such Assessment. Further, funds which are necessary or desired by Shared Facilities Manager for the addition of capital improvements (as distinguished from repairs, maintenance, replacement and/or relocation) relating to the applicable Shared Facilities and which have not previously been collected as reserves or are not otherwise available to Shared Facilities Manager (other than by borrowing) shall be levied by Shared Facilities Manager as Assessments against the applicable Element Owners entitled to use of (or benefiting from) the particular component of the applicable Shared Facilities. The annual regular Assessments provided for in this Article shall commence on the first day of the month next following the recordation of this Declaration and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by Shared Facilities Manager (absent which determination they shall be payable monthly). The Assessment amount (and applicable installments) may be changed at any time by Shared Facilities Manager from that originally stipulated or from any other Assessment that is in the future adopted by Shared Facilities Manager. The original Assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, at any appropriate time during the year), but the amount of any revised Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. Shared Facilities Manager shall fix the date of commencement and the amount of the Assessment against the Elements for each Assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Elements and Assessments applicable thereto which shall be kept in the office of Shared Facilities Manager and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto twenty (20) days prior to payment of the first installment thereof, except as to special Assessments. In the event no such notice of the Assessments for a new Assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

15.5 Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of Shared Facilities Manager. If the Assessments (or installments) provided for herein are

not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such Assessments (or installments) shall become delinquent and shall, together with late charges, interest on the late amount at the Default Rate and the cost of collection thereof (including any costs of any collection agency) and any costs for protection of the lien, as herein provided, thereupon become a continuing lien on the Element and all improvements thereon which shall bind such property in the hands of the then Owner, the Owner's heirs, personal representatives, successors and assigns. Except as provided in Section 15.6 to the contrary, the personal obligation of an Owner to pay such Assessment shall pass to such Owner's successors in title and recourse may be had against either or both. If any installment of an Assessment is not paid within ten (10) days after the due date, at the option of Shared Facilities Manager a late charge not greater than the amount of twenty-five percent (25%) of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) and Shared Facilities Manager may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Element on which the Assessments and late charges are unpaid and all improvements thereon, may foreclose the lien against the applicable portion of the Element and all improvements thereon on which the Assessments and late charges are unpaid in like manner as foreclosure of a mortgage lien, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same (including costs of any collection agency), in such action shall be added to the amount of such Assessments, late charges and interest secured by the lien, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels (and including fees incurred in bankruptcy or probate proceedings, if applicable). Failure of Shared Facilities Manager (or any collecting entity) to send or deliver bills or notices of Assessments shall not relieve Owners from their obligations hereunder. Shared Facilities Manager shall have such other remedies for collection and enforcement of Assessments as may be permitted by applicable law. All remedies are intended to be, and shall be, cumulative.

- 15.6 Subordination of the Lien. The lien of the Assessments provided for in this Article shall be subordinate to real property Tax liens and the lien of any Mortgage on an Element; provided, however, that any such mortgage lender when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any

Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Element by reason of the provisions of this Article shall be deemed to be an Assessment divided equally among, payable by and a lien against all Elements subject to Assessment by Shared Facilities Manager, including the Elements as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

- 15.7 Curative Right. Declarant, for all Elements now or hereafter located within The Properties, hereby acknowledges and agrees, and each Owner of any Element by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to acknowledge and agree, that it shall be the obligation of Shared Facilities Manager to maintain, repair and replace the Shared Facilities in accordance with the provisions of this Declaration. Notwithstanding anything herein contained to the contrary, in the event (and only in the event) that Shared Facilities Manager fails to maintain the applicable Shared Facilities as required under this Declaration, any affected Element Owner shall have the right to perform such duties; provided, however, that, except in the case of an emergency (in which case such notice as is reasonable under the circumstances shall be required) same may only occur after thirty (30) business days' prior written notice to Shared Facilities Manager and provided that Shared Facilities Manager has not effected curative action within said thirty (30) business day period (or if the curative action cannot reasonably be completed within said thirty (30) business day period, provided only that Shared Facilities Manager has not commenced curative actions within said thirty (30) business day period and thereafter diligently pursued same to completion). To the extent that an Element Owner must undertake maintenance responsibilities as a result of Shared Facilities Manager's failure to perform same, then in such event, but only for such remedial actions as may be necessary, the Element Owner shall be deemed vested with the Assessment rights of Shared Facilities Manager hereunder for the limited purpose of obtaining reimbursement from the Owners for the costs of performing such remedial work and the easement rights of the Shared Facilities Manager for the limited purpose of carrying out such remedial actions.
- 15.8 Priority of Liens. Notwithstanding anything herein contained to the contrary, any Assessment sums collected shall be applied first to the Assessments of Shared Facilities Manager, and then to those of the collecting Element Specific Manager.
- 15.9 Financial Records. Shared Facilities Manager shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and relocation of the Shared Facilities, including the then current budget and any then proposed budget (the "Facilities Records"). The Facilities Records need not be audited or reviewed by a Certified Public Accountant. Any Owner shall have the right to inspect the Facilities Records once per

calendar year at the offices of the Shared Facilities Manager, upon not less than thirty (30) days' prior written notice to Shared Facilities Manager, provided that any such inspection shall be limited to the Facilities Records pertaining to the immediately preceding and current calendar year only (and not any other calendar years).

- 15.10 Estoppel Certificates. Upon the request of any Element Owner or its mortgagee, Shared Facilities Manager shall furnish an estoppel certificate confirming such information as may be reasonably requested by such parties, such as the amount and status of payment of Assessments, whether this Declaration has been amended or supplemented (and, if so, identifying the amendments and/or supplements), and whether such Owner or its Permitted Users are in compliance with this Declaration. The estoppel certificate shall be based on the actual knowledge of Shared Facilities Manager without independent investigation. Shared Facilities Manager may establish a reasonable fee to be charged to reimburse it for the cost of preparing any certificates hereunder.
- 15.11 Shared Facilities Manager Consent; Conflict. The provisions of this Article 15 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the prior written consent of Shared Facilities Manager. In the event of any conflict between the provisions of this Article 15, and the provisions of any other Section of this Declaration addressing the same subject matter, the provisions of this Article 15 shall prevail and govern.

16. **PROVISIONS REGARDING PARKING**

- 16.1 General. Declarant hereby grants and reserves unto the Shared Facilities Manager exclusive control of the parking areas within the Shared Facilities and the right at any time, and from time to time, to grant easements over, under and upon the Parking Area, and the exclusive right at any time, and from time to time, to grant or assign to specific Structures, Elements or Units, or any Owner, Unit Owner, Element Specific Manager or other party, the right to use (by easement, license or other agreement) one or more of the parking spaces within the Parking Area on an exclusive or non-exclusive basis, as may be determined by the Shared Facilities Manager in its sole discretion. Accordingly, all of the Parking Areas are and shall be (a) subject to the exclusive control of the Shared Facilities Manager, (b) on an assigned or unassigned, first-come first-serve basis as may be determined by the Shared Facilities Manager in its sole discretion, and (c) subject to all of the terms and conditions of this Article 16 and any rules and regulations promulgated by the Shared Facilities Manager. The Shared Facilities Manager shall have the right to permit persons other than Owners of Elements to use the Parking Area or portions thereof. The Shared Facilities Manager shall have the further right, from time to time, to establish rules and regulations regarding the use of the Parking Area or portions thereof, including without limitation provisions for the involuntary removal of

any violating vehicles, and the fees/rates charged for use of the Parking Area and for services (if any) offered from the Parking Area. All fees collected by the Shared Facilities Manager for the use of the Parking Area or any portion thereof shall be retained by the Shared Facilities Manager and shall not constitute income or revenue of any other Owner (and/or be utilized to offset any Shared Facilities Costs). The Shared Facilities Manager may suspend any Owner's right to use parking space(s) during any period when payments for such parking space(s) from that Owner are delinquent. Temporary guest parking shall be permitted only as determined by the Shared Facilities Manager, and only within spaces and areas, if any, clearly designated for such purpose.

- 16.2 Requirement for Separate Agreement. No Element or the Owner thereof (or its Permitted Users) shall have the right to use any parking spaces within a Parking Area unless such Owner first reaches a written agreement with the Shared Facilities Manager with respect to, *inter alia*, the extent of use to be allowed such Owner (and its Permitted Users), whether such use will be on an assigned or unassigned, first come first serve basis, and the obligation of such Owner to contribute towards the expenses of the Parking Area. The rights and obligations of each Owner of an Element shall be subject to and on the terms and conditions set forth in the written agreement between such Shared Facilities Manager and such Owner, which written agreement may be in the form of a Supplemental Declaration or easement, assignment, instrument or other agreement of any kind. Such rights and obligations shall pass with title to such Element, Structure or Unit, unless otherwise provided in said written agreement.

17. **GENERAL PROVISIONS**

17.1 **Duration.** The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by Shared Facilities Manager, Declarant (at all times) and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by all of the then Owners of the Elements subject hereto and of 100% of the mortgagees thereof has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

Notwithstanding the timing of the recordation of this Declaration, it is the express intent of the parties executing this Declaration, whether as Declarant or joining herein, that the terms and provisions hereof shall be deemed suspended and inapplicable until the "Commercial Release Date" (as defined in the Development Agreement). Prior to the Commercial Release Date, The Properties shall be governed by the terms and provisions of the Development Agreement. [ADD SPECIAL PROVISIONS IF NEEDED IF THE DEVELOPMENT AGREEMENT IS TERMINATED AFTER THE VESTING DATE BUT PRIOR TO THE COMMERCIAL COMPLETION DATE]

17.2 **Notice.** Any notice, demand, request, consent, approval or other communication to be sent to any Owner under the provisions of this Declaration shall be in writing and shall be given or made or communicated by (i) personal delivery, or (ii) a national and reputable overnight carrier, with a request that the addressee sign a receipt evidencing delivery, or (iii) United States registered or certified mail, return receipt requested with postage prepaid, or (iv) such other means as may be determined from time to time by Shared Facilities Manager, addressed to the last known address of the person who appears as Owner on the records of Shared Facilities Manager at the time of such delivery. Each Owner shall have the right to designate a different address from time to time by notice similarly given to Shared Facilities Manager, with a specific direction to update the records of Shared Facilities Manager, at least thirty (30) days before the effective date thereof. Any notice, demand, request, consent, approval or other communication which any Owner is required or desires to give or make or communicate to Declarant or Shared Facilities Manager shall be in writing and shall be given or made or communicated by (i) personal delivery, or (ii) a national and reputable overnight carrier, with a request that the addressee sign a receipt evidencing delivery, or (iii) United States registered or certified mail, return receipt requested with postage

prepaid, or (iv) such other means as may be determined from time to time by Shared Facilities Manager, addressed to the following address:

Declarant: **[insert address]**

Shared Facilities Manager: **[insert address]**

Declarant and Shared Facilities Manager shall have the right to designate a different address from time to time by notice given to Owners in the manner set forth above.

- 17.3 **Enforcement.** Without limiting the generality of Article 9, enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Elements to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 17.4 **Interpretation.** The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions and interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others. All references to Articles, Sections, paragraphs, articles and Exhibits mean the Articles, Sections, paragraphs and Exhibits in (and, in the case of Exhibits, attached to) this Declaration unless another agreement is referenced. All Exhibits attached hereto are hereby incorporated herein by reference and made a part of this Declaration.
- 17.5 **Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.
- 17.6 **Effective Date.** This Declaration shall become effective upon its recordation in the Public Records of the County.
- 17.7 **Amendment.** In addition, but subject, to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by Shared Facilities Manager and Declarant, for so long as it or its affiliate holds title to any Element or Structure affected by this Declaration; or alternatively, by an instrument

signed by Shared Facilities Manager and the Element Owners responsible for more than two-thirds of the Shared Facilities Costs, as allocated among the Element Owners pursuant to Section 15.3, provided that so long as any original signatory to this Declaration (whether as Declarant or by Joinder) or its affiliates owns any interest in any portion of The Properties, the consent of such parties must be obtained. Notwithstanding anything herein contained to the contrary, the provisions of this Declaration affecting Shared Facilities Manager or the Shared Facilities Element (as determined in the sole discretion of Shared Facilities Manager) shall not be amended, modified or, as to any rights granted to Shared Facilities Manager or the Shared Facilities Element Owner, impaired and/or diminished, directly or indirectly, without the prior written consent of Shared Facilities Manager. In the event of any conflict between the provisions of the foregoing sentence and the provisions of any other Section of this Declaration, the provisions of the foregoing sentence shall prevail and govern.

- 17.8 Assignment Option. Shared Facilities Element Owner shall have the option, in its sole discretion, to establish a Florida not-for-profit corporation (the "Successor Corporation"), and to designate the Successor Corporation as the Shared Facilities Manager hereunder. Upon such designation by the Shared Facilities Element Owner, the Successor Corporation shall be Shared Facilities Manager for purposes of this Declaration, unless and until another entity shall be designated as the Shared Facilities Manager by Shared Facilities Element Owner in accordance with the terms of this Declaration. The sole members of the Successor Corporation shall be the Element Owners, whose membership interests and voting interests shall be equivalent to and in the same percentage as each Element Owner's proportionate share of Shared Facilities Costs under Section 15.3. At the time of such designation, Articles of Incorporation and Bylaws shall be prepared by the Shared Facilities Manager setting forth the operating procedures of the Successor Corporation, including procedures for the election of officers and directors and establishment of the Shared Facilities Costs budget. Without limiting the rights of the Shared Facilities Element Owner to convey the Shared Facilities Element to any third party at any time in its sole and absolute discretion, the Shared Facilities Manager may, at any time and at its sole option, elect to convey, by quit claim deed, the Shared Facilities Element to the Successor Corporation. Upon such conveyance, the Successor Corporation shall be deemed to have automatically accepted such conveyance and shall be the Shared Facilities Element Owner for purposes of this Declaration. From and after the conveyance of the Shared Facilities Element to the Successor Corporation, the Successor Corporation shall be responsible for any and all Taxes and/or Assessments attributable to the Shared Facilities Element and for the maintenance, insurance and administration of the Shared Facilities Element, and all expenses relating thereto shall be Shared Facilities Costs hereunder.
- 17.9 Cooperation. Each Owner, by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall

be deemed to covenant and agree, to cooperate in, and support, any and all zoning, administrative, governmental and/or quasi-governmental filings, applications, requests, submissions and other actions necessary or desirable (as determined by Shared Facilities Manager) for development and/or improvement of The Properties, including, without limitation, signing any required applications, plats, authorizations, approvals and the like as the owner of any portion of The Properties owned or controlled thereby when necessary or requested.

- 17.10 Standards for Consent, Approval and Other Actions. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by Declarant or its affiliates, or Shared Facilities Manager, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, unless otherwise expressly provided herein, and shall not be deemed given unless granted in writing by the party receiving the request, and all matters required to be completed or substantially completed by Declarant or its affiliates shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of Shared Facilities Manager. Without limiting the foregoing, no consent or approval shall be granted if the matter or action that is the subject of the consent or approval is not consistent with the Project Standard in the reasonable judgment of Shared Facilities Manager.

Without limiting the generality of the foregoing, whenever the approval of the City is required, whether in its capacity as a municipal governing entity or in its capacity as the fee owner of any portion of The Properties, said approval or disapproval: (i) shall be commercially reasonable and made in good faith and with due diligence and (ii) may be evidenced by written approval from the City Manager, who shall be deemed to have the delegated authority (but not the obligation), after consultation with the City's Chief Financial Officer and City Attorney, to negotiate and execute same.

- 17.11 Easements. Formal language of grant or reservation with respect to easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.
- 17.12 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Shared Facilities to the public, or for any public use.
- 17.13 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Element and/or Unit or other property located on or within The Properties, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant

contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in, or rights with respect to, such Element, Structure or other property.

- 17.14 **NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, SHARED FACILITIES MANAGER, SHARED FACILITIES ELEMENT OWNER, OR ITS OR THEIR AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE SHARED FACILITIES OR ITS OR THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN DOCUMENTS WHICH MAY BE FILED BY DECLARANT FROM TIME TO TIME WITH APPLICABLE REGULATORY AGENCIES, AND (B) AS OTHERWISE REQUIRED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OWNER RECOGNIZES AND AGREES THAT IN A STRUCTURE THE SIZE OF THAT ON THE PROPERTIES, IT IS TYPICAL TO EXPECT BOWING AND/OR DEFLECTION OF MATERIALS. ACCORDINGLY, INSTALLATION OF FINISHES MUST TAKE SAME INTO ACCOUNT. FURTHER, EACH OWNER RECOGNIZES AND AGREES THAT THE EXTERIOR LIGHTING SCHEME FOR THE BUILDING MAY CAUSE EXCESSIVE ILLUMINATION. ACCORDINGLY, INSTALLATION OF WINDOW TREATMENTS SHOULD TAKE SAME INTO ACCOUNT. AMONG OTHER ACTS OF GOD AND UNCONTROLLABLE EVENTS, HURRICANES AND FLOODING HAVE OCCURRED IN SOUTH FLORIDA AND THE PROPERTIES ARE EXPOSED TO THE POTENTIAL DAMAGES FROM FLOODING AND FROM HURRICANES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FROM STORM SURGES AND WIND-DRIVEN RAIN. WATER OR OTHER DAMAGES FROM THIS OR OTHER EXTRAORDINARY CAUSES SHALL NOT BE THE RESPONSIBILITY OF DECLARANT, SHARED FACILITIES MANAGER, SHARED FACILITIES ELEMENT OWNER OR ANY OTHER PARTY. TO THE MAXIMUM EXTENT LAWFUL DECLARANT, FOR ITSELF AND AS THE INITIAL OWNER OF ALL OF THE ELEMENTS, HEREBY DISCLAIMS ANY AND ALL AND EACH AND EVERY EXPRESS OR IMPLIED WARRANTIES, WHETHER ESTABLISHED BY STATUTORY, COMMON, CASE LAW OR OTHERWISE, AS TO THE DESIGN, CONSTRUCTION, SOUND AND/OR ODOR TRANSMISSION, EXISTENCE AND/OR DEVELOPMENT OF MOLDS, MILDEW, TOXINS OR FUNGI, FURNISHING AND EQUIPPING OF THE PROPERTIES AND/OR SHARED FACILITIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COMPLIANCE WITH PLANS, ALL WARRANTIES IMPOSED BY STATUTE AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND OR CHARACTER. FURTHER, GIVEN THE CLIMATE AND HUMID CONDITIONS IN SOUTH FLORIDA, MOLDS, MILDEW, TOXINS AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN THE ELEMENTS, UNITS AND/OR OTHER PORTIONS OF THE PROPERTIES. EACH OWNER IS HEREBY ADVISED THAT**

CERTAIN MOLDS, MILDEW, TOXINS AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING TITLE TO A UNIT AND/OR ELEMENT, OR PORTIONS THEREOF, EACH OWNER, INCLUDING, WITHOUT LIMITATION, EACH UNIT OWNER, SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS AND/OR FUNGI AND TO HAVE RELEASED SHARED FACILITIES MANAGER, SHARED FACILITIES ELEMENT OWNER AND DECLARANT FROM ANY AND LIABILITY RESULTING FROM SAME.

AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE ELEMENTS AND/OR STRUCTURES (WHETHER FROM DECLARANT OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

LASTLY, EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF AN ELEMENT AND/OR CONDOMINIUM UNIT, UNDERSTANDS AND AGREES THAT THERE ARE VARIOUS METHODS FOR CALCULATING THE SQUARE FOOTAGE OF AN ELEMENT AND/OR CONDOMINIUM UNIT. ADDITIONALLY, AS A RESULT OF IN THE FIELD CONSTRUCTION, OTHER PERMITTED CHANGES TO THE ELEMENT AND/OR CONDOMINIUM UNIT, AND SETTLING AND SHIFTING OF IMPROVEMENTS, ACTUAL SQUARE FOOTAGE OF AN ELEMENT AND/OR CONDOMINIUM UNIT MAY ALSO BE AFFECTED. BY ACCEPTING TITLE TO AN ELEMENT, THE APPLICABLE OWNER(S) SHALL BE DEEMED TO HAVE CONCLUSIVELY AGREED TO ACCEPT THE SIZE AND DIMENSIONS OF THE ELEMENT. DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACTUAL SIZE, DIMENSIONS OR SQUARE FOOTAGE OF ANY ELEMENT, AND EACH OWNER SHALL BE DEEMED TO HAVE FULLY WAIVED AND RELEASED ANY SUCH WARRANTY AND CLAIMS FOR LOSSES OR DAMAGES RESULTING FROM ANY VARIANCES.

- 17.15 Covenants Running With The Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 17.1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with The Properties and with title to The Properties. Without limiting the generality of Section 17.5 hereof, if any provision or application of this Declaration would prevent this Declaration from running with The Properties as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as

close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with The Properties; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties (that these covenants and restrictions run with The Properties as aforesaid) be achieved.

17.16 Covenant in Lieu of Unity of Title. By joining in this Declaration, the City recognizes and agrees that this Declaration shall serve as the easement and operating agreement required by that certain Declaration of Covenant in Lieu of Unity of Title recorded against The Properties. Notwithstanding anything to the contrary, without first obtaining the prior written approval of the City, development of The Properties shall be limited to: (i) no more than sixty (60) residential units/apartments and (ii) commercial and recreational uses (within no more than 45,000 square feet of floor area), provided that the total floor area to be developed on The Properties shall not exceed 319,802 square feet.

17.17 CPI. Whenever specific dollar amounts are stated in this Declaration or any exhibits hereto, unless limited by Legal Requirements or the specific text hereof (or thereof), such amounts shall increase from time to time by application of a nationally recognized consumer price index chosen by Shared Facilities Manager (rounded, in the case of insurance, to the closes \$1,000 increment), using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, Shared Facilities Manager shall choose a reasonable alternative to compute such increases. In no event shall increases under this provision occur more frequently than the fifth (5th) anniversary of the recording of this Declaration and each fifth (5th) anniversary thereafter.

18. **DISCLAIMER OF LIABILITY**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN ANY OTHER DOCUMENT GOVERNING OR BINDING THE PROPERTIES (COLLECTIVELY, THE "GOVERNING DOCUMENTS"), NEITHER DECLARANT, SHARED FACILITIES MANAGER OR SHARED FACILITIES ELEMENT OWNER SHALL BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

- (a) IT IS THE EXPRESS INTENT OF THE GOVERNING DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND

ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

- (b) NEITHER DECLARANT, SHARED FACILITIES MANAGER NOR SHARED FACILITIES ELEMENT OWNER IS EMPOWERED NOR ESTABLISHED TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LEGAL REQUIREMENTS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY AND/OR ANY OTHER GOVERNMENTAL AUTHORITY OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND
- (c) ANY PROVISIONS OF THE GOVERNING DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE RECIPIENT OF SUCH ASSESSMENT FUNDS TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO ITS ELEMENT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST DECLARANT, SHARED FACILITIES MANAGER OR SHARED FACILITIES ELEMENT OWNER ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE AFOREMENTIONED PARTIES HAS BEEN DISCLAIMED IN THIS ARTICLE.

Signatures contained on the following page

JOINDER OF MORTGAGEE

_____, as mortgagee under that certain [Mortgage, Security Agreement and Fixture Financing Statement] dated as of _____ and recorded on _____ in Official Records Book _____, at Page _____ of the Public Records of Miami-Dade County, Florida (the "Mortgage"), hereby consents to the terms, conditions, easements and provisions of the foregoing Declaration of Covenants, Restrictions and Easements for Three Hundred Alton (the "Master Declaration") and the recordation thereof, and agrees that the lien and effect of the Mortgage shall be and is subject and subordinate to the terms of the Master Declaration.

Executed as of the day and year of the Master Declaration.

[_____]

By: _____

Name: _____

Title: _____

STATE OF _____)

) SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 201_, by _____, as _____ of _____, on behalf of said bank. He/she is personally known to me or produced _____ as identification.

Name: _____

Notary Public, State of _____

My commission expires: _____

Commission No. _____

JOINDER OF CITY

SECTION 17.17 HAS BEEN APPROVED AS TO FORM & LANGUAGE FOR EXECUTION TO SERVE AS A DECLARATION OF RESTRICTIVE COVENANTS IN LIEU OF UNITY OF TITLE ("COVENANT IN LIEU") AND AS THE EASEMENT AND OPERATING AGREEMENT REQUIRED BY THE COVENANT IN LIEU

City Attorney

Date: _____

City Planning Director

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTIES

EXHIBIT "B"

LEGAL DESCRIPTION OF ELEMENTS

COMMERCIAL ELEMENT:

[Legal to be inserted]

RESIDENTIAL ELEMENT:

[Legal to be inserted]

SHARED FACILITIES ELEMENT:

The Properties, LESS AND EXCEPT, the Commercial Element and Residential Element, as each such Element is legally described and/or depicted in this Exhibit "B".

SCHEDULE D

FORM OF PURCHASE MONEY PROMISSORY NOTE

PURCHASE MONEY PROMISSORY NOTE

\$50,000,000.00

_____, 2021
Miami, Florida

FOR VALUE RECEIVED, the undersigned **MARINA PARK RESIDENTIAL, LLC**, a Delaware limited liability company (“Borrower”), promises to pay to the order of **THE CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation (“Lender”), in lawful money of the United States of America, the principal sum of Fifty Million and No/100 Dollars (\$50,000,000.00) (the “Loan”), upon the following terms and conditions:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in that certain Development Agreement 2020-_____-_____ for the development of the Marina Park Project dated as of _____, 2020 by and between Lender, on the one hand, and Borrower and Marina Park Commercial, LLC, a Delaware limited liability company, collectively, jointly and severally, as “Developer” on the other hand (the “Development Agreement”), and any capitalized terms not otherwise defined herein or in the Development Agreement shall have the meanings assigned such terms on **Schedule A** attached hereto:

2. Principal Payments. Borrower shall make the following principal payments:

(a) Five Million and No/100 Dollars (\$5,000,000.00) on January 1, 2022;

(b) Five Million and No/100 Dollars (\$5,000,000.00) on September 1, 2022; and

(c) The outstanding principal balance, and all accrued and unpaid interest, shall be due and payable on the date on which all Construction Commencement Conditions have been satisfied by Borrower (the “Maturity Date”).

3. Interest Payments. No interest shall accrue on the outstanding balance of the Loan until the date that is the earlier of (i) ninety (90) days after Borrower has obtained the Project Approvals, or (ii) the day that is fifty-four (54) months after the date hereof (the “Interest Commencement Date”); provided, however, if Borrower fails to make any payment in accordance with Section 2(a) or Section 2(b) above, such payment shall accrue interest at the Default Rate in accordance with Section 10 hereof until paid, and if Borrower fails to make any payment in accordance with Section 2(c) or this Section 3 the outstanding principal balance of the Loan shall accrue interest at the Default Rate in accordance with Section 10 hereof until paid. From and after the Interest Commencement Date through the Maturity Date, interest shall accrue at the applicable Interest Rate and shall be paid by Borrower to Lender on the Maturity Date. Interest will be computed for the actual number of days elapsed on the basis of a month consisting of 30 days and a year consisting of 360 days.

4. Method of Payments. Borrower shall not prepay the indebtedness evidenced hereby, in whole or in part, except in accordance with Section 2(a) and Section 2(b) hereof and except for application of Proceeds to the Loan as set forth in Section 1.4 of the Mortgage. Principal and interest will be payable to Lender by wire transfer of immediately available funds to the Lender’s account pursuant to wire instruction delivered by Lender to Borrower in writing.

5. Application of Payments. Principal payments described in Section 2(a) and Section 2(b) hereof shall be applied in reduction of the outstanding principal balance due hereunder. Any other payments made by Borrower will be applied first to any Default Interest, then in reduction of interest then due at the applicable Interest Rate, and any amount remaining after such payments of Default Interest and interest will be applied in reduction of the outstanding principal balance due hereunder.

6. Extensions of Time. Notwithstanding the foregoing or anything to the contrary contained in this Note or any other Loan Document, the Interest Commencement Date and the Maturity Date each shall be tolled up to forty two (42) months in connection with Lawsuits and Marina Lawsuits provided the same are being diligently pursued in good faith and shall be reasonably extended for (i) an Unavoidable Delay in accordance with the Development Agreement; and/or (ii) Seller Delays, if applicable.

7. Purchase Agreement and Mortgage. This Note is given in partial payment of the purchase price due from Borrower to Lender pursuant to the Purchase and Sale Agreement (the "Purchase Agreement") dated as of _____, 2020, pursuant to which Borrower has purchased the Residential Parcel from Lender; and this Note is secured by a purchase money mortgage (the "Mortgage") encumbering the Residential Parcel.

8. Defaults and Remedies. Upon the occurrence of any of the following defaults (each, an "Event of Default"):

- (a) Borrower fails to pay any amount of principal and interest, or any part thereof, under this Note within three (3) Business Days after the due date thereof; or
- (b) Any other Material Event of Default; or
- (c) A Transfer that is not a Permitted Transfer; or
- (d) Borrower fails to pay any Taxes in accordance with Section 1.4 of the Mortgage and such failure continues for a period of 30 days thereafter, subject to Borrower's right to contest same as set forth therein

then the principal sum, all interest accrued thereon and all charges and fees which are part of the Loan and any other sums advanced by Lender under this Note and the other Loan Documents will, at the option of Lender, and without notice, demand or presentment for payment to Borrower or any other person or entity, at once become due and payable and may be collected forthwith, regardless of the stipulated Maturity Date, anything herein or in the other Loan Documents to the contrary notwithstanding, all without any relief whatsoever from any valuation or appraisal laws, and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to Lender in this Note or any of the other Loan Documents, or by such other rights and remedies which Lender may have at law, in equity or otherwise. Interest will accrue on the principal sum, from the date of any Event of Default (so long as such Event of Default continues), regardless of whether or not there has been an acceleration of the payment of principal as set forth herein, at the Default Rate.

9. Costs of Collection. If this Note is placed in the hands of an attorney for collection, by suit or otherwise, Borrower will pay all reasonable costs of collection and attorneys' fees incurred by Lender, including, but not limited to, reasonable attorneys' fees incurred in all judicial, bankruptcy, reorganization, administrative, appeals or other proceedings in which Borrower (or any permitted successor or assign hereof) appear as debtors.

10. Default Interest. Notwithstanding anything to the contrary set forth herein: (a) from and after the date of any default under Section 2(a) or Section 2(b) hereof, such past due payment shall bear interest at the Default Rate until paid in full; and (b) from and after the Maturity Date or the date of any default (in the event of acceleration of the indebtedness evidenced hereby by Lender as expressly permitted hereunder by reason of default by Borrower hereunder or otherwise), the entire indebtedness due hereunder and all other charges payable hereunder, will bear interest ("Default Interest") at the Default Rate.

11. Lender's Limitation of Liability.

(a) Lender is acting hereunder solely in its proprietary capacity, as the seller of the Residential Parcel and recipient of the Note and Mortgage to secure Borrower's obligations to pay Lender the purchase price for the Residential Parcel as described herein and in the Note and other Loan Documents.

(b) Any tort liability to which the Lender is exposed under this Note 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 Note, and Lender expressly does not waive any of its rights and immunities thereunder.

(c) Lender will not in any event whatsoever be liable for any injury or damage to Borrower (except to the extent caused by the gross negligence or willful misconduct of any City Parties) or to any other Person happening on, in or about the Residential Parcel and its appurtenances, nor for any injury or damage to the Residential Parcel or to any property belonging to Borrower (except to the extent caused by the gross negligence or willful misconduct of any City Parties) or to any other Person which may arise from any other cause whatsoever (except to the extent caused by the gross negligence or willful misconduct of any City Parties).

(d) No member, official, representative, or employee of Lender shall have any personal interest, direct or indirect, in this Note or any other Loan Documents, nor shall any such member, official, representative or employee participate in any decision relating to this Note or any other Loan Documents 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 Lender shall be personally liable to Borrower or any successor in interest in the event of any default or breach by Lender.

12. Assumption of Obligations. The obligations under this Note may not be assumed by any Person except to a transferee of the entire Residential Parcel in connection with a Permitted Transfer without Lender's prior written consent, which may be granted or withheld in Lender's sole discretion; provided that any such transferee shall assume in writing Borrower's obligations hereunder and deliver a copy of such assumption to the City within 30 days after the occurrence of such Permitted Transfer.

13. Certain Waivers. Borrower and any endorsers hereof severally waive presentment, demand, protest and notice of protest, demand, dishonor and nonpayment and agree that Lender, without releasing the liability of Borrower or any endorser hereof, may grant extensions or renewals hereof in whole or in part, from time to time, without notice to either of them, successively or otherwise, and for any term or terms and Lender will not be liable for, or prejudiced by, the failure to collect or a lack of diligence in bringing suit under this Note or any renewals or extensions hereof. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any default.

14. Usury. It is the intention of the parties to conform strictly to the usury and other laws relating to interest from time to time in force, and all agreements between Borrower and Lender, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, will the amount paid or agreed to be paid to Lender, or collected by Lender or for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein, or in any other Loan Documents or in any other security agreement given to secure the indebtedness of Borrower to Lender, or in any other document evidencing, securing or pertaining to the indebtedness evidenced hereby, exceed the maximum amount permissible under applicable usury or such other laws (the "Maximum Amount"). If under any circumstances whatsoever fulfillment of any provision hereof or of any of the other Loan Documents or any other document, at the time performance of such provision is due, involves exceeding the Maximum Amount, then ipso facto, the obligation to be fulfilled will be reduced to the Maximum Amount. For the purposes of calculating the actual amount of interest paid and/or payable hereunder, in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the Lender for the use, forbearance or detention of the indebtedness of Borrower evidenced hereby, outstanding from time to time, to the extent permitted by applicable law will be amortized, prorated, allocated and spread from the date of disbursement of the proceeds of this Note until payment in full of all of such indebtedness, so that the actual rate of interest on account of such indebtedness is uniform through the term hereof. If under any circumstances Lender ever receives an amount deemed interest by applicable law which would exceed the Maximum Amount, such amount that would be excessive interest under applicable usury laws or such other laws will be deemed a payment in reduction of the principal sum without premium or penalty and will be so applied or will be applied to the principal amount of other indebtedness secured by the Mortgage and not to the payment of interest, or if such excessive interest exceeds the principal sum and any other indebtedness of Borrower in favor of Lender the excess will be deemed to have been a payment made by mistake and will be refunded to Borrower or to any other person making such payment on Borrower's behalf.

15. Relationship of Borrower and Lender. Borrower and Lender intend that the relationship created under this Note and all other Loan Documents be solely that of debtor and creditor or mortgagor and mortgagee, as the case may be. Nothing herein or in the Mortgage is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender, nor to grant Lender any interest in the Residential Parcel other than that of creditor or mortgagee, it being the intent of the parties hereto that Lender will have no liability whatsoever for any losses generated by or incurred with respect to the Residential Parcel nor will Lender have any control over the day-to-day management or operations of the Residential Parcel.

16. Time. It is specifically agreed that time is of the essence of this Note and of each provision in which time is an element. If the date for the performance of any term, provision or condition (monetary or otherwise) under this Note falls on a day other than a Business Day, the date for the performance of such term, provision or condition will be extended to the next succeeding Business Day, with interest on the principal sum at the applicable Interest Rate provided in this Note to such next succeeding business day if such term, provision or condition results in the extension of any monetary payment due to Lender.

17. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Florida.

18. Forum. Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court (in Miami-Dade County) or any United States federal court sitting in the Southern District of Florida, over any dispute. Borrower hereby

irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Borrower in any other court or jurisdiction.

19. Partial Invalidity. If any provision or term of this Note or the application thereof to any Person or circumstances 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 will be stricken from and construed for all purposes not to constitute a part of this Note, and the remaining portions and terms of this Note shall remain in full force and effect and shall, for all purposes, constitute this entire Note.

20. Payments. Acceptance by Lender of partial payment of any sum due hereunder will not constitute an accord and satisfaction, and Borrower will remain liable for the entire sum due; and no memorandum, restrictive endorsement or other legend on any instrument by which payment is made hereunder will affect the rights and liabilities of Lender and Borrower hereunder or under the other Loan Documents.

21. Headings. The paragraph and section headings that appear in this Note 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.

22. Waiver of Trial by Jury. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER, BY ITS ACCEPTANCE HEREOF, EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES 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 NOTE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO BORROWER ENTERING INTO THIS NOTE AND TO THE LENDER ACCEPTING IT. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.**

[Signature on following page]

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed and delivered by its duly authorized officer as of the date first written above.

MARINA PARK RESIDENTIAL, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

SCHEDULE A

DEFINITIONS

- (a) “**Default Interest**” has the meaning set forth in Section 10.
- (b) “**Event of Default**” has the meaning set forth in Section 8 hereof.
- (c) “**Interest Rate**” means, for the period from the Interest Commencement Date through the day prior to the second anniversary thereof, an interest rate equal to one percent (1.0%) above the LGIP Rate, and commencing on the second anniversary of the Interest Commencement Date and on each anniversary thereafter, increasing by 0.5% above the Interest Rate previously in effect during the prior twelve (12) month period, until the Maturity Date.
- (d) “**LGIP Rate**” means the average daily rate of interest published by the Florida Cooperative Liquid Assets Securities System (FLCLASS) for Local Government Investment Pool, calculated on the first Business Day of each month, or if such rate is no longer published, a comparable rate of interest selected by Lender for short-term, liquid investments by local governments. Notwithstanding the foregoing, for purposes hereof, the LGIP Rate shall never be less than 0%.
- (e) “**Loan Documents**” means this Note and the Mortgage, each as may be amended from time to time in accordance with their respective terms.
- (f) “**Maturity Date**” has the meaning set forth in Section 2(c).
- (g) “**Maximum Amount**” has the meaning set forth in Section 14.
- (h) “**Mortgage**” has the meaning set forth in Section 7.
- (i) “**Note**” means this Purchase Money Promissory Note.
- (j) “**Permitted Transfer**” means a “Permitted Transfer” under the following sections of the Development Agreement: Sections 5.3(b)(i), 5.3(b)(ii) solely if required by the Mezzanine Lender, 5.3(b)(iii) solely as it relates to the Mezzanine Lender, 5.3(b)(v) solely as it relates to the Mezzanine Lender, 5.3(b)(vi), 5.3(b)(vii), 5.3(b)(viii) and 5.3(b)(ix) solely as it relates to the Mezzanine Lender; provided, that, except for Transfers under Sections 5.3(b)(iii), (v), (vi) and (vii), no such Transfer shall be effective unless and until executed copies of the documents that convey title to the transferred interest are delivered to Lender within thirty (30) days after the occurrence of such Transfer.
- (k) “**Proceeds**” shall have the meaning set forth in the Mortgage.
- (l) “**Purchase Agreement**” has the meaning set forth in Section 7.
- (m) “**Residential Parcel**” shall have the meaning assigned such term in the Mortgage.
- (n) “**Taxes**” shall have the meaning set forth in the Mortgage.
- (o) “**Transfer**” means any sale, assignment or conveyance, in one or a series of transactions in the nature of a sale, assignment of conveyance, of (i) the Residential Parcel from Borrower to another Person, (ii) any legal or beneficial interest in the Project, or any part thereof or (iii) any direct or indirect ownership interest in Borrower; provided, however, pledges by an owner of Borrower of profits and the right to receive distributions and unreturned capital in connection with ownership interests of the

Borrower shall be permitted hereunder provided that the lender receiving such pledge does not have a mortgage on the Residential Parcel or a pledge of equity interests of Borrower and cannot take ownership or control of either the Borrower or the Residential Parcel, has no rights under this Note or the Mortgage, such transfer of beneficial interest does not affect in any manner any of the Lender's rights under this Note or the Mortgage, and no such Transfer shall be effective unless and until executed copies of the relevant Transfer documents are delivered to Lender within thirty (30) days after the occurrence of such Transfer).

SCHEDULE E

FORM OF PURCHASE MONEY MORTGAGE

(attached hereto)

THE INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Lauren M. Hunt
Alvarez & Diaz-Silveira LLP
355 Alhambra Circle, Suite 1450
Coral Gables, FL 33134

PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT

THIS PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT (this “Mortgage”) dated as of _____, 2021, made by **MARINA PARK RESIDENTIAL, LLC**, a Delaware limited liability company (“Mortgagor”), having its principal place of business at 3310 Mary Street, Suite 302, Coconut Grove, Florida 33133, as mortgagor, to **THE CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation (“Mortgagee”), having an office at 1700 Convention Center Drive, 4th Floor, Miami Beach, FL 33139, as mortgagee and secured party.

PRELIMINARY STATEMENT

(1) Contemporaneously herewith Mortgagor has purchased from Mortgagee, pursuant to the Purchase and Sale Agreement (the “Purchase Agreement”) dated as of _____, 2020, that certain Residential Parcel, as hereinafter defined, situated in Miami-Dade County, Florida, in partial payment for which Mortgagor has requested Mortgagee to make a purchase money loan (the “Loan”) to Mortgagor in the aggregate original principal amount of Fifty Million and No/100 Dollars (\$50,000,000.00) and Mortgagor has executed and delivered to Mortgagee a purchase money promissory note (the “Note”), of even date herewith, in the amount of the Loan.

(2) Mortgagee requires as a condition precedent to the making of the Loan to Mortgagor that Mortgagor execute and deliver this Mortgage to Mortgagee.

(3) Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in that certain Development Agreement 2020-_____-_____ for the development of the Marina Park Project dated as of _____, 2020 by and between Mortgagee, on the one hand, and Mortgagor and Marina Park Commercial, LLC, a Delaware limited liability company, collectively, jointly and severally, as “Developer” on the other hand (the “Development Agreement”).

NOW, THEREFORE, in consideration of the benefits accruing to Mortgagor, the receipt and sufficiency of which are hereby acknowledged, and in order to secure payment of the indebtedness of \$50,000,000.00 evidenced by the Note, Mortgagor hereby grants, mortgages, bargains, sells, transfers, conveys and assigns to Mortgagee, under and subject to the terms and conditions hereinafter set forth, all of its estate, right, title and interest, whether now owned or hereafter acquired, in and to the following described property (collectively, the "Property");

All the parcel of air and the real property located in Miami-Dade County, Florida, which is legally described in Exhibit "A" attached hereto and made a part hereof (the "Residential Parcel");

TOGETHER WITH all right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Residential Parcel to the center line thereof, all claims whatsoever of Mortgagor with respect to the Residential Parcel, either in law or in equity, all options to purchase the Residential Parcel or any portion thereof or interest therein, and any greater estate in the Residential Parcel, and all additions to and proceeds of the foregoing (the aforesaid rights and the Residential Parcel are, collectively, the "Premises");

TOGETHER WITH all machinery, apparatus, equipment, fittings, fixtures, appliances, and articles of personal property of every kind and nature whatsoever, owned by Mortgagor and now or hereafter located in or upon the Residential Parcel or any part thereof, and used or useable in connection with any present or future operation of said Residential Parcel and the improvements located thereon and now owned or hereafter acquired by Mortgagor. Without limiting the foregoing, the Mortgagor hereby grants to the Mortgagee a security interest in all of its present and future "equipment," "inventory," "general intangibles" and "accounts" (as said quoted terms are defined in the Uniform Commercial Code of the State of Florida) located at the Premises and the Mortgagee will have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code (all such items described in this section, collectively, "Personal Property").

TOGETHER WITH all of Mortgagor's rights, title and interest in and to any and all awards or payments (to be disbursed and applied as hereinafter provided), including interest thereon, and the right to receive the same, which may be made with respect to the Premises as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment, and of the reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

TOGETHER WITH the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Premises and to commence any action or proceedings to protect the interest of Mortgagee in the Premises;

TOGETHER WITH, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining to the Premises, including all right, title and interest of Mortgagor in and to the underlying title of any road or other dedicated area abutting the Premises and all after-acquired title of Mortgagor in the Premises;

TOGETHER WITH all extensions, improvements, betterments, substitutes and replacements of, and all additions and appurtenances to, the Premises and the Personal Property, hereafter acquired by or released to the Mortgagor or constructed, assembled or placed on the Premises, and all conversions of the security

constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, will become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described therein.

TO HAVE AND TO HOLD as provided herein the above granted and described Property unto the Mortgagee and to its successors and assigns forever, and Mortgagor hereby binds itself and its successors and assigns to warrant and forever defend the Property unto the Mortgagee, its successors and assigns against the claim or claims of all Persons claiming or to claim the same, or any part thereof.

THIS MORTGAGE is given to secure the payment of the amounts due under the Note and the performance of all obligations by Mortgagor contained herein (all of said obligations and agreements of Mortgagor hereinafter collectively referred to as the “Obligations”). Each and every term and provision of the Note is hereby incorporated by reference herein as though set forth in full and shall be considered as part of this Mortgage.

AND TO PROTECT THE SECURITY OF THIS MORTGAGE, Mortgagor covenants and agrees as follows:

SECTION 1. Representations, Warranties, Covenants and Agreements of Mortgagor.

1.1 Payment of Obligations. Mortgagor will pay all of the Obligations when due and observe and comply with all obligations to be observed and complied with under this Mortgage.

1.2 Authority. Mortgagor represents and warrants as of the date hereof (a) that Mortgagor has full power and lawful authority to enter into the Note and this Mortgage and to encumber the Property in the manner set forth herein; and (b) that there are no current defenses or offsets to this Mortgage or to the Obligations which it secures.

1.3 Mortgage Authorized. The execution and delivery of this Mortgage has been duly authorized by Mortgagor, and the execution and delivery by it of, and performance by it of its obligations under, this Mortgage will not result in Mortgagor being in default under any provision of its certificate of formation, operating agreement or of any other material agreement to which Mortgagor is a party or which affects the Property or any part thereof or any other property of Mortgagor.

1.4 Taxes. Upon the issuance of a tax folio number for the Property independent of property owned by any other Person, Mortgagor covenants to pay all and singular taxes, assessments and other sums assessed, levied, confirmed or imposed on the Property by any Governmental Authority (collectively, “Taxes”) prior to delinquency thereof; provided, however, that Mortgagor, at Mortgagor’s sole cost, shall have the right contest any Taxes by appropriate proceedings provided that Mortgagor proceeds with diligence and in good faith and (a) such proceedings operate to prevent the collection of, or other realization upon, the Taxes being contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, and (c) Mortgagee is not subjected to any Claims as a result of such contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith. In all such cases, Mortgagor must either pay the estimated tax to the appropriate taxing authorities or escrow the full amount of such estimated tax with

Mortgagee, which escrowed amount, if any, shall be returned to Mortgagor upon resolution of such contest.

1.5 Casualty and Eminent Domain. Should the Property or any part thereof or interest therein be damaged by any casualty or taken or damaged by reason of any public improvements or condemnation proceeding or in any other similar manner (a "Condemnation"), or should Mortgagor receive any notice or other information thereof, Mortgagor will give prompt written notice with respect to any such casualty or Condemnation to Mortgagee. All compensation, awards, damages and proceeds resulting from any such insurance settlement and/or condemnation proceeding (collectively the "Proceeds") shall be retained by Mortgagor provided Mortgagor uses such Proceeds solely for the restoration of the Property. If Mortgagor does not use the Proceeds solely for restoration of the Property then the Proceeds shall be assigned to and will be paid to Mortgagee to apply the same toward the payment of the Obligations, notwithstanding the fact that the Obligations may not then be due and payable. Mortgagor, upon request by Mortgagee, will make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the Proceeds, if applicable, to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever.

1.6 Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds the parties hereto and their respective successors and permitted assigns.

1.7 Protective Advances. In the event the Mortgagor fails to pay prior to delinquency any tax, assessment, or other sum of money payable by virtue of this Mortgage or any other Loan Document or otherwise fail to perform its obligations hereunder after the expiration of any applicable notice and cure period, Mortgagee may pay or perform the same, without waiving or affecting the option to foreclose or any other right hereunder, and any payments made in connection therewith shall be secured by the Lien of this Mortgage and shall bear interest at the Default Rate from the date of demand until paid. The provisions of this Section shall not prevent the triggering of any Material Event of Default such failure otherwise might cause.

1.8 Indemnification; Subrogation; Waiver of Offset.

(a) If Mortgagee is made a party defendant to any litigation concerning this Mortgage, Mortgagor will defend, indemnify and hold harmless Mortgagee and the City Parties from any Claims (except to the extent caused by the gross negligence or willful misconduct of Mortgagee or any City Parties) which Mortgagee or any City Parties may incur in connection therewith.

(b) All sums payable by Mortgagor hereunder will be paid without setoff, counterclaim or deduction and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee or Mortgagor, or any action taken with respect to this Mortgage by Mortgagee or any receiver of Mortgagee or Mortgagor; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor has notice or knowledge of any of the foregoing. Mortgagor waives, to the extent permitted by law, all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any of the Obligations. Notwithstanding the foregoing

or anything to the contrary set forth in the Loan Documents, Mortgagee's warranties by virtue of the deed from Mortgagee to Mortgagor transferring fee title to the Property are not diminished, amended or modified in any manner and Mortgagor reserves all rights against Mortgagee with respect thereto.

(c) Nothing contained herein is intended to modify the indemnity obligations of Mortgagor to Mortgagee under any other agreements between Mortgagor and Mortgagee.

SECTION 2. Security Agreement.

2.1 Creation of Security Interest. Mortgagor, as debtor, and having its principal place of business at the address set forth in the preamble hereof, hereby grants to Mortgagee, as secured party, a security interest in, and Lien on, all Personal Property, any and all renewals or replacements of or additions and substitutions to the Personal Property and all proceeds of the Personal Property (collectively, the "Secured Property"). These security interests and Liens will secure all of the Obligations.

2.2 Warranties, Representations and Covenants of Mortgagor. The Mortgagor hereby warrants, represents and covenants as follows:

(a) Mortgagor hereby authorizes Mortgagee to file and/or record one or more financing statements and renewals, continuation statements and amendments thereof pursuant to the Uniform Commercial Code of the State of Florida (the "UCC") in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact to execute, deliver and file such instruments for or on behalf of Mortgagor upon the failure of Mortgagor to do so within a reasonable time after demand, and Mortgagor will pay the cost of any such filing.

(b) This Mortgage constitutes a "security agreement," as that term is used in the UCC.

SECTION 3. Defaults and Remedies.

3.1 Defaults. The occurrence of any Event of Default, as defined in the Note, will constitute an event of default ("Event of Default") under this Mortgage.

3.2 Remedies. During the continuing existence of any Event of Default, Mortgagee may forthwith and without notice or demand exercise all rights and remedies provided in this Mortgage and the Note and/or which may be available to Mortgagee by law, and all such rights and remedies will be cumulative and concurrent and may be pursued singularly, successively, or together, at Mortgagee's sole option, and may be exercised as often as occasion therefor occurs. During the continuing existence of an Event of Default, the Mortgagee may, inter alia, notwithstanding anything contained herein to the contrary: (a) declare the Loan, all interest thereon and all other amounts payable thereunder or in respect thereof to be forthwith due and payable; or (b) enter into or upon the Property, either personally or by its agents, nominees, and/or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon; Mortgagee may use, operate, manage, control, insure, maintain, restore and otherwise deal with all and every part of the Property and conduct the business thereat and apply the receipts from the Property to the payment of the Obligations; or (c) institute proceedings for the complete foreclosure of this Mortgage; or (d) apply for and obtain the appointment of a trustee, receiver, liquidator, or conservator of the Property (and the expenses, including receiver's fees, attorneys' and paralegals' fees and costs incurred by Mortgagee in connection therewith will be secured by the lien of this Mortgage).

3.3 Foreclosure Sale. To the maximum extent now or hereafter permitted by law, during the continuing existence of an Event of Default hereunder, neither Mortgagor nor anyone claiming by, through, or under it will set up, claim, or seek to take advantage of any stay, marshalling of assets or extension laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property pursuant to a final judgment rendered in a foreclosure proceeding of this Mortgage. Notwithstanding the foregoing, this Section will not be deemed a waiver of the right of Mortgagor to pay Mortgagee prior to foreclosure and sale all principal and interest due and payable under the Note and all other costs and expenses incurred by Mortgagor in the enforcement of its rights under the Loan Documents. The purchaser(s) at a foreclosure sale held pursuant to final judgment will be entitled to immediate possession of the Property, and Mortgagor, for itself and all who may at any time claim by, through, or under it hereby waive, to the fullest extent permitted by law, the benefit of all such laws. Real estate sold pursuant to any writ of execution issued on a judgment against Mortgagor obtained by virtue of the Note, this Mortgage, or any other Loan Document, or pursuant to any other judicial proceedings under this Mortgage, the Note, or any other Loan Document, may be sold in one parcel, as an entirety or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect. Upon any such foreclosure sale, Mortgagee may bid for and purchase the Property and, upon compliance with the terms of sale, may hold retain, possess and dispose of such Property in its own absolute right without further accountability.

3.4 Costs of Collection. If Mortgagee shall incur or expend any reasonable sums, including reasonable attorneys' fees, whether in connection with any action or proceeding or not, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, all such sums shall on notice and demand be paid by Mortgagor, together with the interest thereon at the Default Rate from and after demand by Mortgagee until paid, and shall be a lien on the Property, prior to any right or title to, interest in, or claim upon the Property subordinate to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note; and that in any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

3.5 Default Rate. All delinquent payments hereunder and all monies which may be advanced by Mortgagee as a result of any default by the Mortgagor hereunder or for any other purpose authorized in this Mortgage will be repaid to Mortgagee with interest at the Default Rate from the date of demand for repayment by Mortgagee, until such time as said sums are paid, including the period following entry of any judgment, which payment shall be due without demand by Mortgagor to Mortgagee and, if not repaid immediately, shall bear interest at the Default Rate, and the sum due shall be secured by the lien of this Mortgage.

SECTION 4. OTHER COVENANTS

4.1 Waiver of Stay. As an additional inducement to and material consideration for Mortgagee agreeing to the Loan, Mortgagor agrees that in the event a Bankruptcy or Judicial Action (as defined herein) is commenced which subjects the Mortgagee to any stay in the exercise of the Mortgagee's rights and remedies under this Mortgage, including the automatic stay imposed by section 362 of the Bankruptcy Code (individually and collectively, "Stay"), then, provided the Stay is lifted and released as to the Mortgagee, Mortgagor irrevocably consents and agrees to the Stay being lifted and released against Mortgagee, and Mortgagee shall thereafter be entitled to exercise all of its rights and remedies against Mortgagor under the Loan Documents. Mortgagor acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Mortgagee under the terms of Loan Documents 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

Mortgagor 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 Mortgagor, any action where Mortgagor is adjudicated as bankrupt or insolvent, any action for dissolution of Mortgagor 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 Mortgagee of its rights and remedies under this Mortgage.

4.2 Project Approvals. Mortgagor shall use diligent commercially reasonable good faith efforts to pursue and obtain the Project Approvals. Mortgagee, in its proprietary capacity and not in its regulatory capacity as a governmental body, shall reasonably cooperate with Mortgagor's efforts to obtain the Project Approvals. Without limiting the generality of the foregoing, after receiving a written request from Mortgagor that is consistent with all Governmental Requirements, Mortgagee, at Mortgagor's sole cost and expense (including Mortgagee's reasonable attorneys' fees in reviewing any agreements), shall join Mortgagor, Marina Lessee and sublessee under the Master Sublease, as applicable, when required by law in any and all applications and agreements for Project Approvals and other approvals, permits and agreements as may be commercially reasonably necessary for developing and constructing the Project or any portion thereof, which applications, permits and agreements are necessary because Mortgagee is the fee owner of property adjacent to the Residential Parcel or the lessee of those certain submerged lands adjacent to Mortgagee's fee property pursuant to a submerged lands lease, and which applications, permits and agreements may include applications for subdivision approval, covenants in lieu of unity of title, easement agreements, and demolition permits and applications for the City of Miami Beach Design Review Board approval, which joinder shall be delivered by Mortgagee within fifteen (15) days with respect to all such applications for Project Approvals and within five (5) days following the parties' agreement with respect to any covenants, easements, permits or other agreements required in connection with such Project Approvals or the Project. Mortgagor shall pay all fees and charges for all such applications. Failure of Mortgagee to perform as requested within such fifteen (15) or five (5) day period, as applicable, shall be deemed a delay by the Mortgagee hereunder and under the Note for the number of days of delay beyond such fifteen (15) or five (5) day period, as applicable, and shall not be a Mortgagee default hereunder provided the period of delay does not exceed one hundred twenty (120) days.

SECTION 5. Miscellaneous.

5.1 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Florida.

5.2 Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court (in Miami-Dade County) or any United States federal court sitting in the Southern District of Florida, over any dispute. Mortgagor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

5.3 Usury. It is the intention of the parties to conform strictly to the usury and other laws relating to interest from time to time in force, and all agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, will the amount paid or agreed to be paid to Mortgagee, or collected by Mortgagee or for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein, or in the Mortgage, in any other Loan Documents or in any other

security agreement given to secure the indebtedness of Mortgagor to Mortgagee, or in any other document evidencing, securing or pertaining to the indebtedness evidenced hereby, exceed the maximum amount permissible under applicable usury or such other laws (the “Maximum Amount”). If under any circumstances whatsoever fulfillment of any provision hereof or of the Mortgage, any of the other Loan Documents or any other document, at the time performance of such provision is due, involves exceeding the Maximum Amount, then ipso facto, the obligation to be fulfilled will be reduced to the Maximum Amount. For the purposes of calculating the actual amount of interest paid and/or payable hereunder, in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the Mortgagee for the use, forbearance or detention of the indebtedness of Mortgagor evidenced hereby, outstanding from time to time, to the extent permitted by applicable law will be amortized, prorated, allocated and spread from the date of disbursement of the proceeds of this Note until payment in full of all of such indebtedness, so that the actual rate of interest on account of such indebtedness is uniform through the term hereof. If under any circumstances Mortgagee ever receives an amount deemed interest by applicable law which would exceed the Maximum Amount, such amount that would be excessive interest under applicable usury laws or such other laws will be deemed a payment in reduction of the principal sum without premium or penalty and will be so applied or will be applied to the principal amount of other indebtedness secured by the Mortgage and not to the payment of interest, or if such excessive interest exceeds the principal sum and any other indebtedness of Mortgagor in favor of Mortgagee the excess will be deemed to have been a payment made by mistake and will be refunded to Mortgagor or to any other person making such payment on Mortgagor’s behalf.

5.4 Notices. A notice or communication under this Mortgage by Mortgagee, on the one hand, to Mortgagor, on the other, or by Mortgagor to Mortgagee 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:

If to Mortgagee:

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

With a copy to:

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

If to Mortgagor:

Marina Park Residential, LLC
3310 Mary Street, Suite 302
Coconut Grove, Florida 33133
Attention: David Martin and Ellen Buckley

With a copy to:

Gangemi Law Group, PLLC
3310 Mary Street, Suite 303
Coconut Grove, Florida 33133
Attention: Laura Gangemi, Esq.

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.

5.5 Headings/Use of Terms/Exhibits. The paragraph and section headings that appear in this Mortgage 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. All references to Sections and articles mean the Sections and articles in this Mortgage. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Mortgage in its entirety. The terms “agree” and “agreements” mean and include “covenant” and “covenants.” The words “include” and “including” shall be interpreted as if followed by the words “without limitation.” All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Residential Parcel, Premises or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of Florida, as in effect from time to time, which is not defined in this Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of Florida. If a term is defined in Article 9 of the Uniform Commercial Code of Florida differently than in another Article of the Uniform Commercial Code of Florida, the term shall have the meaning specified in Article 9. All Exhibits attached hereto are hereby incorporated herein by reference as though set out in full herein.

5.6 Invalidity or Unenforceability. If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations secured hereby, or if such Lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations will be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, will be considered to have been first paid on and applied to the full payment of that portion of the Obligations which is not secured or not fully secured by the lien of this Mortgage.

5.7 Partial Invalidity. If any provision or term of this Mortgage or the application thereof to any Person, party or circumstances 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 will be stricken from and construed for all purposes not to constitute a part of this Mortgage, and the remaining portions and terms of this Mortgage shall remain in full force and effect and shall, for all purposes, constitute this entire Mortgage.

5.8 Non-Waiver. Except as expressly provided to the contrary herein, acceptance by Mortgagee of any sum after the same is due will not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due will be deemed an acceptance on account only and upon condition that it will not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due will be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee will be at all times thereafter and until the entire sum then due has been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon it, upon the occurrence of a default. Consent by Mortgagee to any transaction or action of Mortgagor which is subject to consent or approval of Mortgagee hereunder will not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions. No failure by Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof will constitute a waiver of any such term or of any such breach. No waiver of any breach will affect or alter this Mortgage, which will continue in full force and effect, or the rights of Mortgagee with respect to any other then existing or subsequent breach.

5.9 Further Assurances. Mortgagor at its own expense, will execute, acknowledge and deliver all such instruments and take all such action as may be reasonably necessary to assure to Mortgagee the interest in the Property herein described and the rights intended to be provided to Mortgagee herein provided that such instruments and actions do not increase Mortgagor's obligations or decrease Mortgagor's rights.

5.10 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

5.11 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee relating to the subject matter hereof and thereof and supersede all prior negotiations, agreements, understandings, letters of intent and discussions (whether oral or written) between Mortgagor and Mortgagee, 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.

5.12 Successors and Assigns. All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Residential Parcel and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

5.13 Amendments. This Mortgage may not be modified or amended unless in writing and signed by Mortgagor and Mortgagee. All amendments must be approved by majority vote of the Miami Beach City Commission, subject to the requirements of applicable law. Mortgagee shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Mortgagor, or otherwise connected with any action requested by or for the benefit of Mortgagor, and shall be reimbursed by Mortgagor for all out of pocket expenses (including third party consultants and attorneys) incurred by Mortgagee. Prior to Mortgagee taking action regarding any such request,

Mortgagor shall deposit with the Mortgagee the estimated amount of such costs, as reasonably determined by the Mortgagee.

5.14 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage and the other Loan Documents and of each provision in which time is an element. If the date for the performance of any term, provision or condition (monetary or otherwise) under this Mortgage falls on a Saturday, Sunday or other day on which banks in Miami-Dade County, Florida are not required to be open, the date for the performance of such term, provision or condition will be extended to the next succeeding regular business day, with interest on the principal sum at the applicable rate provided in the Loan Documents to such next succeeding business day if such term, provision or condition results in the extension of any monetary payment due to Mortgagee.

5.15 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in this Mortgage shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until all of the Obligations shall have been paid and performed in full.

5.16 Relationship of Mortgagor and Mortgagee. The Mortgagor and the Mortgagee intend that the relationship created under this Mortgage, the Note and all other Loan Documents be solely that of mortgagor and mortgagee or debtor and creditor, as the case may be. Nothing herein or in the Note is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Mortgagor and Mortgagee, nor to grant Mortgagee any interest in the Property other than that of creditor or mortgagee, it being the intent of the parties hereto that Mortgagee will have no liability whatsoever for any losses generated by or incurred with respect to the Property nor will Mortgagee have any control over the day-to-day management or operations of the Property.

5.17 Waiver of Jury Trial. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE HEREOF, EACH 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 MORTGAGE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF MORTGAGOR OR MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE MORTGAGOR ENTERING INTO THIS MORTGAGE AND TO THE MORTGAGEE ACCEPTING IT. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

[Signatures on following page]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

MARINA PARK RESIDENTIAL, LLC, a
Delaware limited liability company

By:

Name: _____

By: _____
Name:
Title:

Name: _____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me, by means of [] physical presence or [] online notarization, this ____ day of _____, 20__, by _____, as _____ of and on behalf of MARINA PARK RESIDENTIAL, LLC, a Delaware limited liability company, on behalf of the company; and s/he is personally known to me or has produced a Florida driver's license as identification.

(Notary Seal)
State of Florida
My Commission Expires:

Name: _____
Notary Public

EXHIBIT "A"

Legal Description of Residential Parcel

[A maximum of 0.3 acres of the following described land to consist of the to-be-designed lobby and ancillary areas of the residential portion of the Project: 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 air space above such Lots to the extent required for the 275,000 square foot residential improvements to be constructed therein.

The proposed design of the commercial and residential portion of the Project will evolve through the design development process and accordingly, the initial legal description of the Residential Parcel will be preliminary in nature and will be attached to this Agreement by amendment prior to Closing. The initial legal description will be consistent with the limitations contained herein and, in accordance with the Development Agreement, shall be sufficient to accommodate the design development for the residential portion of the Project and will thereafter be revised to conform to the updated and actual legal description thereof following receipt of all Governmental Approvals and following completion of the Project in accordance with the Development Agreement.]¹

¹ Initial legal description to be inserted prior to Closing and recording

SCHEDULE F

FORM OF RECOGNITION AGREEMENT

This instrument prepared by or under the supervision of
(and after recording should be returned to):

Laura Gangemi Vignola, Esq.
Gangemi Law Group, PLLC
3310 Mary Street, Suite 303
Miami, FL 33133

(Space reserved for Clerk of Court)

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this “**Agreement**”) is made and effective as of _____, 2021 [insert date of closing under the air parcel PSA], by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation (the “**City**”), **MARINA PARK COMMERCIAL, LLC**, a Delaware limited liability company (the “**Master Sublessee**”) and **MB MARINA PARK, LLC**, a Delaware limited liability company (the “**Marina Lessee**”); collectively with the City and Master Sublessee, the “**Parties**,” and each, a “**Party**”).

RECITALS

WHEREAS, the City, as lessor, and MB Marina Park, LLC, a Delaware limited liability company, as lessee (the “**Marina Lessee**”), are simultaneously herewith entering into that certain Ground Lease Agreement (the “**Marina Lease**”), which shall be effective on January 1, 2022, pursuant to which the City shall be leasing to Marina Lessee the real property and improvements thereon legally described on Exhibit “A” attached hereto and by this reference made a part hereof (the “**Property**”);

WHEREAS, Marina Lessee, as sublessor, and Master Sublessee, as sublessee, are simultaneously herewith entering into that certain Master Sublease (the “**Master Sublease**”), which shall be effective on March 15, 2021, for a term commencing on the date set forth in the Master Sublease, pursuant to which Marina Lessee shall be subleasing to Master Sublessee the

portion of the Property legally described on Exhibit “B” attached hereto and by this reference made a part hereof (the “**Subleased Property**”);

WHEREAS, Master Sublessee, together with its affiliate, Marina Park Residential, LLC, a Delaware limited liability company, as “developer,” and the City have entered into that certain Development Agreement recorded on _____, 2020 in Official Records Book ____ at Page ____ of the Public Records of Miami-Dade County, Florida (the “**Development Agreement**”); and

WHEREAS, the Parties are entering into this Agreement pursuant to the requirements of the Marina Lease.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. **Recitals; Definitions.** The foregoing Recitals are true and correct and are hereby incorporated by reference. Capitalized terms not defined in this Agreement shall have the meanings ascribed such terms in the Marina Lease.

2. **Recognition, Non-Disturbance and Attornment.** In the event of a termination of the Marina Lease for any reason: (a) the Master Sublessee will not be disturbed and will be allowed to continue peacefully in possession of the Subleased Property with full enjoyment of all rights under the terms and conditions of the Master Sublease; (b) the Master Sublease and each of its terms and provisions, including, without limitation, all lender protection provisions, shall not be affected or terminated and shall continue automatically for the duration of the term of the Master Sublease and all extensions thereof with the Master Sublease continuing as a direct lease between the City and the Master Sublessee with the same force and effect as if the City had originally entered into the Master Sublease as “lessor” thereunder; (c) the City and Master Sublessee shall recognize one another as lessor and lessee, respectively, under the Master Sublease, and shall be bound to one another under all of the terms, covenants and conditions of the Master Sublease, and Master Sublessee shall attorn to the City as Master Sublessee’s lessor under the Master Sublease; and (d) upon written request from a Party, but at the sole cost and expense of Master Sublessee, the Parties shall enter into a new lease agreement for the remainder of the original term of the Master Sublease upon the same terms and conditions as the Master Sublease (a “**New Lease**”). All references in this Agreement to the Master Sublease shall include any such New Lease.

3. **No Default.** This Agreement shall not be conditioned upon Master Sublessee not being in default under the Master Sublease, but, subject to the terms of the Master Sublease, the City shall have all rights and remedies of the “lessor” under the Master Sublease if Master Sublessee is in default under the Master Sublease, provided that nothing herein shall be construed as a waiver of Marina Lessee’s rights and remedies under the Master Sublessee in the event of default by the Master Sublessee. City shall not seek to terminate, extinguish, abrogate, or otherwise modify the Master Sublease in any action or proceeding to terminate the Marina Lease unless required to protect the City’s rights in connection with any proceeding to terminate

the Marina Lease, in which case City and Master Sublessee shall enter into a New Lease not later than any date on which the Master Sublease is terminated, which New Lease shall be effective immediately and simultaneously upon any such termination of the Master Sublease. Notwithstanding the foregoing, the City shall have the right to terminate this Agreement and/or seek to terminate or extinguish the Master Sublease in connection with an action or proceeding to terminate the Marina Lease upon written notice to Master Sublessee during the continuance of any Material Event of Default (as such term is defined in the Development Agreement) provided that (a) all notice, grace and cure periods under the Development Agreement that are applicable to Protected Lenders have expired without cure by such Protected Lenders of such Material Event of Default and (b) no Protected Lender has exercised its rights to a new master sublease pursuant to the terms of the Marina Lease (or corresponding provisions of the Master Sublease) or to a new development agreement pursuant to the terms of the Development Agreement.

4. **Adjustment to Legal Descriptions.** The Parties acknowledge that the legal descriptions of the Property and the Subleased Property are subject to revision based upon final design review approval by the City's Design Review Board and conditional use approval by the City's Planning Board with respect to the project contemplated under the Development Agreement (collectively, the "**Project Approvals**"), and based upon the final, as-built structures. The Parties shall reasonably cooperate with one another from time to time, upon any Party's request and at Master Sublessee's expense, to correct such legal descriptions 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 amendments to this Agreement to conform such legal descriptions to the Project Approvals and to the final, as-built structures. Additionally, the City agrees to execute amendments to the Marina Lease as and when required pursuant to the terms of Section 2.1 of the Marina Lease.

5. **No Amendments.** The City and Marina Lessee shall not materially amend, modify, supplement or restate, or permit any amendment, modification, supplementation or restatement that materially affects Marina Lessee's rights and obligations under the Marina Lease with respect to the Subleased Property without the written approval of Master Sublessee in its sole and absolute discretion so long as the Master Sublease remains in effect. Marina Lessee and Master Sublessee shall not materially amend, modify, supplement or restate, or permit any amendment, modification, supplementation or restatement of the Master Sublease affecting Marina Lessee's and Master Sublessee's rights and obligations as set forth in this Agreement or in the Marina Lease without the written approval of the City Manager in its sole and absolute discretion.

6. **Lender Protections.** Each Protected Lender shall be deemed a third-party beneficiary of this Agreement. If any Protected Lender exercises its rights to a new master sublease pursuant to the terms of the Marina Lease (or corresponding provisions of the Master Sublease), then all references in this Agreement to the Master Sublease shall include any such new master sublease and all references to the Master Sublessee or a "Party" shall include any such Protected Lender that has exercised such rights. If any Protected Lender exercises its rights to a new development agreement pursuant to the terms of the Development Agreement, then all references in this Agreement to the Development Agreement shall include any such development agreement.

7. **Further Assurances.** Although the provisions of this Agreement shall be self-operative and shall be effective immediately and concurrently with the termination of the Marina Lease for any reason, each Party agrees to execute and deliver to the other Parties such other commercially reasonable instrument or instruments as the requesting Party shall from time to time request in order to confirm the provisions of this Agreement.

8. **Miscellaneous.**

(i) **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 any joint venture between or among any of the City, Marina Lessee or Master Sublessee, or as constituting any one Party as the agent or representative of any other Party for any purpose or in any manner whatsoever.

(ii) **Recording.** This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida at Master Sublessee's sole cost and expense.

(iii) **Florida Laws Prevail.** This Agreement shall be governed by the laws of the State of Florida. If any term, covenant, or condition of this Agreement or the application thereof to a Party 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. In any legal action brought by a 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 an arbitration award, bankruptcy awards and orders, and those incurred on appeal.

(iv) **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 Master Sublessee 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 Master Sublessee or successor or on any obligations under the terms of this Agreement.

(v) **Notice.** A notice or communication, under this Agreement by any one Party to any other Party 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) Master Sublessee. In the case of a notice or communication to Master Sublessee if addressed as follows:

To:

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

With Copies To:

Gangemi Law Group, PLLC
3310 Mary Street
Suite 303
Miami, Florida 33133
Attention: Laura Gangemi Vignola, Esq.

(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

(c) Marina Lessee. In the case of a notice or communication to the Marina Lessee, if addressed as follows:

To:

MB Marina Park, LLC
17330 Preston Road, Suite 220A

Dallas, Texas 75252
Attention: Bryan C. Redmond

With Copies To:

MB Marina Park, LLC
300 Alton Road, Suite 208
Miami Beach, Florida 33139
Attention: General Manager

And

Powell Coleman & Arnold
8080 North Central Expressway, Suite 1380
Dallas, Texas 75206
Attention: Brian DeVoss

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.

(vi) Estoppel Certificates. Each Party shall, within thirty (30) days after written request by any other Party, execute, acknowledge and deliver to the Party which has requested the same or to any actual or prospective Protected Lender, purchaser of the Master Sublessee's interest in the Subleased Property or any part thereof, purchaser of Master Sublessee's leasehold interests under the Master Sublease or purchaser of any direct or indirect equity interest in Master Sublessee (in each case to the extent such third party is a transferee pursuant to a Permitted Transfer under the Development Agreement), 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. to the knowledge of the certifying Party any and all conditions under this Agreement to be performed up to that date by any other Parties hereto, 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 certifying Party, has against the enforcement of this Agreement by any 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

- d. as to any other matters of fact reasonably requested by requesting Party and reasonably related to this Agreement, the Marina Lease, the Master Sublease, or the New Lease.

The Party to whom any such certificate shall be issued may rely on the matters therein set forth; however, in delivering such certificate the certifying Party (nor any individual signing such certificate on such Party's behalf) shall not 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 certifying Party pursuant to this paragraph shall be deemed to have been made by such certifying Party and not by the person signing same.

(vii) Provisions not Merged with Deed. Unless otherwise expressed in the instrument of conveyance or transfer, none of the provisions of this Agreement are intended to or shall be merged by reason of any deed:

- a. transferring the Property or any part thereof from Marina Lessee (or its permitted successors or assigns) to the City (or its permitted successors or assigns);
- b. transferring title to the Property or any part thereof from the City (or its permitted successors or assigns) to Marina Lessee (or its permitted successors or assigns);
- c. transferring title to the Subleased Property or any part thereof from the City (or its permitted successors or assigns) to Master Sublessee (or its permitted successors or assigns).

Any such deed or instrument of conveyance shall not be deemed to affect or impair the provisions and covenants of this Agreement.

(viii) 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.

(ix) 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.

(x) Successors and Assigns; No Third Party Beneficiaries. All of the covenants conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Parties. The Parties acknowledge and agree that except for Protected Lenders, if any, each of which shall have the rights set forth in the Marina Lease and the Master Sublease (which rights under the Master Sublease shall confirm in all respects the rights of the Protected Lenders under the Marina Lease with respect to the Subleased Property) and shall be deemed a third-party beneficiary of this Agreement, 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 Subleased Property 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 the Marina Lease.

(xi) Entire Agreement. This Agreement and its Exhibits and Schedules, the Marina Lease, the Master Sublease, the Purchase Agreement and the Development Agreement constitute the sole and only agreement 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 Marina Lease, the Master Sublease, or the Development Agreement are of no force or effect and are merged into this Agreement.

(xii) Amendments. No amendments to this Agreement shall be binding on the Parties unless in writing and signed by the Parties. 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 this Agreement. The City shall not be obligated to expend any money or undertake any obligation connected with any such amendment proposed by Master Sublessee, or otherwise connected with any action requested by or for the benefit of Master Sublessee under this Agreement, and shall be reimbursed by Master Sublessee for all reasonable out of pocket expenses (including third party consultants and attorneys) incurred by the City. Prior to the City taking action regarding any such request, Master Sublessee shall deposit with the City the estimated amount of such costs, as reasonably determined by the City.

(xiii) Non-Subordination of City's Interest. The City's fee interest in and ownership of the Subleased Property shall not be subject or subordinate to or encumbered by any financing for the Subleased Property or lien or encumbrances affecting Master Sublessee's interest in the Subleased Property or by any acts or omissions of Master Sublessee or the Master Sublessee or Space Lessees under the Master Sublease. The City represents and warrants to Master Sublessee that as of the date of this Agreement Lease no mortgages, security agreements, or similar liens or encumbrances currently exist against the City's interest in the Subleased Property. The City acknowledges that this Agreement shall not be subordinate to any future mortgage against the City's interest in the Subleased Property. Notwithstanding anything to the contrary contained in this Agreement, if all or any portion of the interest of the City in the Subleased Property 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, (a) this Agreement and the rights of Master Sublessee hereunder shall continue in full force and effect and shall not be terminated or disturbed and (b) the Master Sublease and the rights of Master Sublessee thereunder shall continue in full force and effect and shall not be terminated or disturbed.

(xiv) 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 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 Subleased Property or otherwise referenced in this Agreement.

(xv) 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.

(xvi) No Brokers. Master Sublessee 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 Master Sublessee 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 Master Sublessee 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.

(xvii) Master Sublessee Entity. On the date of execution hereof, Master Sublessee is a limited liability company. In the event that at any time, Master Sublessee 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 Master Sublessee entity.

(xviii) Standard of Conduct. The implied covenant of good faith and fair dealing under Florida law is expressly adopted.

(xix) Waiver of Consequential Damages. Notwithstanding anything contained in this Agreement to the contrary, in no event shall a Party be liable to another Party for any consequential, exemplary or punitive damages.

(xx) 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.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Master Sublessee has caused this Agreement to be 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.

CITY

Signed, sealed and delivered
in the presence of:

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

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 _____, 202_, by _____, as _____ of _____ Who is personally known to me or who produced _____ as identification.

Notary Public
Commission Number: _____

Commission Expires: _____

MASTER SUBLESSEE:

Signed, sealed and delivered
in the presence of

**MARINA PARK COMMERCIAL, LLC, a
Delaware limited liability company**

Print Name:

By: _____

Print Name:

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 _____, 202_, by **MARINA PARK COMMERCIAL, LLC**, a Delaware limited liability company, as _____ of _____ Who is personally known to me or who produced _____ as identification.

Notary Public
Commission Number: _____
Commission Expires: _____

**MB MARINA PARK, LLC, a Delaware
limited liability company**

Signed, sealed and delivered
in the presence of

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 _____, 202_, by **MB MARINA PARK, LLC**, a Delaware limited liability company, as _____ of _____ Who is personally known to me or who produced _____ as identification.

Notary Public
Commission Number: _____
Commission Expires: _____

SCHEDULE G

Existing Sublessees

1. Danny Jelaca Inc.
2. Texas De Brazil (South Beach) Corporation
3. Monty's Sunset, LLC
4. Freedom Boat Club, LLC
5. Great Seats Miami Inc.
6. H20 Sports Management, Inc.
7. HCB Yachts
8. RCI Marine, Inc.
9. SMI Concierge Services, Ltd
10. Tarpoon Lagoon, Inc.
11. Miami Beach Deli, LLC
12. Dennison Yacht Sales
13. Nigel Burgess, Inc.
14. Allied Marine Inc.
15. HMY Yacht Sales, Inc., a Florida corporation
16. MarineMax East, Inc.
17. Yacht Brasil Motorboats and Charters LLC
18. Fastboats.com Sales Company, LLC, to the extent such sublease is in effect
19. Nautico Food Services, LLC, to the extent such sublease is in effect

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.